***HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE**
AND
HON'BLE SRI JUSTICE G. BHAVANI PRASAD

+Writ Petition Nos. 2214, 2290, 2291, 2294, 2295, 2456, 2457, 3184, 3189, 3275, 3281, 3371, 3372, 3401, 3406, 3413, 3459, 3498, 3502, 3512, 3530, 3576, 3577, 3624, and 4327 of 2006

% 01-05-2007

W.P. No.2214 of 2006:

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Sri B. Narasimha Reddy, S/o Anantha Reddy, Aged about 68 years, Chairman, Nalgonda-Ranga Reddy District Milk Producers Coop. Union Ltd., Hayath Nagar, Hyderabad .. Petitioner

Vs.

$ The State of Andhra Pradesh, rep. by its Secretary to Govt. of Andhra Pradesh, Legislative Affairs & Justice, Law Department, Secretariat, Saifabad, Hyderabad and others .. Respondents

! Counsel for the petitioner : Sri S. Rama Chandra Rao and Sri K.R. Prabhakar

^Counsel for Respondent Nos.1, 2, 3 and 6 : Advocate General

Counsel for Respondent No.4 : --

Respondent No.5 : Deleted as per Court order dated 07-02-2006

Counsel for Respondent No.7 : Sri S. Satyanarayana Prasad and Kumari C. Sindhu Kumari

Counsel for the Intervenor : Sri K.G. Kannabhiran

W.P. No.2290 of 2006:

Guntur District Milk Producers Mutually Aided Cooperative Union Ltd., (Sangam Dairy) at Vadlamudi, Guntur District rep. by its Chairman Sri K. Rajan Babu, S/o Krishnaiah, Aged about 50 years, resident of Grandhasiri Village, Atchampet Mandal, Guntur District and others .. Petitioners

Vs.

$ Government of Andhra Pradesh rep. by its Secretary, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

! Counsel for the petitioners : Sri B.V. Subbaiah

^Counsel for respondent Nos.1, 2 and 4 : Advocate General

Respondent No.3 : Deleted as per Court order dated 07-02-2006

W.P. No.2291 of 2006:

Krishna District Milk Producers Mutually Aided Cooperative Union Ltd., Vijayawada, Krishna District rep. by its Chairman Sri M. Janaki Ramaiah, S/o Rathaiah, aged About 74 years, R/o. Movva, Krishna District and others .. Petitioners

Vs.

$ Government of Andhra Pradesh rep. by its Secretary, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

! Counsel for the petitioners : Sri B.V. Subbaiah

^Counsel for respondent Nos.1, 2 and 4 : Advocate General

Respondent No.3 : Deleted as per Court order

dated 07-02-2006

W.P. No.2294 of 2006:

Sri C. Rajeshwar Rao, S/o Sri Kishan Rao,
Aged 49 years, Occ: Agriculture, R/o.
H.No.9-5-168/9/1, Saptagiri Colony,
Karimnagar, Karimnagar Dist.
and another .. Petitioners

Vs.

$ The Government of A.P., rep. by its
Secretary, Legislative Affairs and Justice,
Law Department, Secretariat, Hyderabad
And others .. Respondents

! Counsel for the petitioners : Sri G. Mohan Rao

^Counsel for the respondents : Advocate General

W.P. No.2295 of 2006:

Sri Bhuma Narayana Reddy, S/o Linga
Reddy, aged 62 years, Occ: Agriculture,
R/o. H.No. W Kothapalli, Dornipadu
Mandal, Kurnool Dist. and another .. Petitioners

Vs.

$ The Government of A.P. rep. by its
Secretary, Legislative Affairs and Justice,
Law Department, Secretariat,
Hyderabad and others .. Respondents

! Counsel for the petitioners : Sri G. Mohan Rao

^Counsel for the respondents : Advocate General

W.P. No.2456 of 2006:

M. Gopal Krishna Choudary, S/o. Shri Venkanna,
Aged 75 years, Chairman, Nellore District

Milk Producers Co-operative Union Limited,
Resident of South Amulur, Tothpalli, Gudur
Mandal, Nellore District .. Petitioner

Vs.

$ The State of Andhra Pradesh rep. by its
Secretary to Government of Andhra Pradesh,
Legislative Affairs & Justice, Law Department,
Secretariat, Hyderabad and others ..
Respondents

! Counsel for the petitioner : Sri D. Prakash Reddy
and

Smt. K. Bindu

^Counsel for the respondents : Advocate General

W.P. No.2457 of 2006:

Challa Srinivas Rao, S/o Shri Kondayya,
Aged 42 years, Chairman, Prakasham
District Milk Producers Co-operative
Union Limited, resident of Ongole,
Prakasham District .. Petitioner

Vs.

$ The State of Andhra Pradesh rep. by its
Secretary to Government of Andhra Pradesh,
Legislative Affairs & Justice, Law Department,
Secretariat, Hyderabad and others ..
Respondents

! Counsel for the petitioner : Sri D. Prakash Reddy
and

Smt. K. Bindu

^Counsel for the respondents : Advocate General

W.P. No.3184 of 2006:

Krishna District Milk Producers Mutually Aided
Cooperative Societies Association rep. by
G.V. Krishna Rao, S/o Rama Chandra Rao,

Aged about 51 years, Duddavaram village,
Gannavaram Mandal, Krishna District .. Petitioner

Vs.

$ Government of Andhra Pradesh rep. by its
Secretary, Legislative Affairs & Justice,
Law Department, Secretariat, Hyderabad
and others .. Respondents

! Counsel for the petitioner : Sri B.V. Subbaiah

^Counsel for respondents : Advocate General

W.P. No.3189 of 2006:

West Godavari District Milk Producers Mutually
Aided Cooperative Societies Association, rep.
by Jallaparthi Udaya Bhaskara Rao, S/o.
Subba Rao, aged about 42 years, R/o
Nallajarla Post and Mandal, West
Godavari District. .. Petitioner

Vs.

$ Government of Andhra Pradesh rep. by its
Secretary, Legislative Affairs & Justice,
Law Department, Secretariat, Hyderabad
and others .. Respondents

! Counsel for the petitioner : Sri B.V. Subbaiah

^Counsel for respondents : Advocate General

W.P. No.3275 of 2006:

Cooperative Development Foundation
(a society registered under the Andhra
Pradesh Societies Registration Act)
having its Office at 4-335/2, Sahavikasa
Colony, Near Chintagattu Camp, Warangal
represented by its President, Rama Reddy .. Petitioner

Vs.

$ Government of Andhra Pradesh represented
by its Secretary, Department of Legislative
Affairs & Law, Secretariat, Hyderabad and

others .. Respondents

! Counsel for the petitioner : Sri S. Niranjan Reddy

^Counsel for the respondents : Advocate General

W.P. No.3281 of 2006:

Kuchipudi Milk Producers' Mutually Aided Cooperative Society Limited, Kuchipudi (v), Amarathuluru (M), Guntur Dstrict, rep. by its President, Y. Suresh Babu, S/o Y. Anjaiah, Hindu, aged about 50 years, R/o. Kuchipudi Village, Amarathuluru Mandal, Guntur District .. Petitioner

Vs.

$ Government of Andhra Pradesh rep. by its Secretary, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

! Counsel for the petitioner : Sri V.V. Prabhakar Rao

^Counsel for the respondents : Advocate General

W.P. No.3371 of 2006:

The Jillella Mutually Aided Milk Producers Cooperative Society Ltd., Jillella, Gosupadu Mandal, Kurnool Dist. rep. by its President Sri G. Sadasiva Reddy, S/o Ayyappa Reddy and others .. Petitioners

Vs.

$ The Government of A.P., rep. by its Secretary, Legislative Affairs and Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

! Counsel for the petitioners : Sri G. Mohan Rao

^Counsel for the respondents : Advocate General

W.P. No.3372 of 2006

The Vijaya Milk Producers Mutually Aided Cooperative Society Ltd., Thadikal, Shankara Patnam Mandal, Karimnagar Dist. rep. by its President Sri D. Narayana, S/o Venkataiah and others .. Petitioners

Vs.

$ The Government of A.P., rep. by its Secretary, Legislative Affairs and Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

! Counsel for the petitioners : Sri G. Mohan Rao

^Counsel for the respondents : Advocate General

W.P. No.3401 of 2006:

Guntur District Milk Producers Mutually Aided Cooperative Societies Association Rep. by K. Rajan Babu, S/o Krishnaiah, Aged about 52 years, R/o Grandhasiri Village, Atchampet Mandal, Guntur District .. Petitioner

Vs.

$ Government of Andhra Pradesh rep. by its Secretary, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

! Counsel for the petitioner : Sri B.V. Subbaiah

^Counsel for the respondents : Advocate General

W.P. No.3406 of 2006:

Donepudi Milk Producers' Mutually Aided Cooperative Society Limited, Donepudi (v), Kolluri Mandal, Guntur District, rep. by its President, G. Konda Lakshmignanda Bhagaven, S/o Radha Krishna Murthy,

Hindu, aged about 45 years, R/o. Donepudi Village, Kolluri Mandal, Guntur District .. Petitioner

Vs.

$ Government of Andhra Pradesh rep. by its Secretary, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

! Counsel for the petitioner : Sri V.V. Prabhakara Rao

^Counsel for the respondents : Advocate General

W.P. No.3413 of 2006:

Patibandla Milk Producers' Mutually Aided Cooperative Society Ltd., Patibandla (V), Peddakorapadu (M), Guntur District rep. by its President, Yeruva Bala Reddy, S/o. Y. Chinnappa Reddy, Hindu, aged about 50 years, R/o. Patibandla village, Peddakorapadu Mandal, Guntur District .. Petitioner

Vs.

$ Government of Andhra Pradesh rep. by its Secretary, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

! Counsel for the petitioner : Sri V.V. Prabhakara Rao

^Counsel for the respondents : Advocate General

W.P. No.3459 of 2006:

Athota Milk Producers' Mutually Aided Cooperative Society Limited, Athota (V), Kollipara Mandal, Guntur District, rep. by its President, K. Koteswara Rao, S/o. Venkata Ramnamma, Hindu, aged about 63 years, R/o. Athota village, Kollipara

Mandal, Guntur District. .. Petitioner

Vs.

$ Government of Andhra Pradesh rep. by its
Secretary, Legislative Affairs & Justice,
Law Department, Secretariat, Hyderabad
and others .. Respondents

! Counsel for the petitioner : Sri V.V. Prabhakara Rao

^Counsel for the respondents : Advocate General

W.P. No.3498 of 2006:

Guddikayalanka Milk Producers' Mutually
Aided Cooperative Society Limited,
Guddikayalanka (v), Repalle Mandal,
Guntur District, rep. by its President,
Gummadi Roopchand, S/o. Venkata
Subbaiah, Hindu, aged about 50 years,
R/o. Guddikayalanka village, Repalle
Mandal, Guntur District .. Petitioner

Vs.

$ Government of Andhra Pradesh rep. by
its Secretary, Legislative Affairs & Justice,
Law Department, Secretariat, Hyderabad
and others .. Respondents

! Counsel for the petitioner : Sri V.V. Prabhakara Rao

^Counsel for the respondents : Advocate General

W.P. No.3502 of 2006:

Mulkanoor Women Mutually Aided Milk
Producers Cooperative Union Limited,
Bheemdeverapally Village & Mandal,
Karimnagar District, rep. by its
President Smt. V. Vijaya ..
Petitioner

Vs.

$ Government of Andhra Pradesh rep. by its
Secretary, Animal Husbandry, Dairy
Development & Fisheries (Dairy II) Department,
Secretariat Buildings, Hyderabad and another ..
Respondents

! Counsel for the petitioner : Sri S. Chakrapani

^Counsel for the respondents : Advocate General

W.P. No.3512 of 2006:

Vemuru Milk Producers' Mutually Aided
Cooperative Society Limited, Vemuru (V),
Vemuru Mandal, Guntur District, rep. by
its President, Ganta Venu, S/o. G. Sambasiva
Rao, Hindu, aged about 30 years, R/o.
Vemuru village, Vemuru Mandal, Guntur
District and others .. Petitioners

Vs.

$ Government of Andhra Pradesh rep. by its
Secretary, Legislative Affairs & Justice,
Law Department, Secretariat, Hyderabad
and others .. Respondents

! Counsel for the petitioners : Sri V.V. Prabhakara Rao

^Counsel for the respondents : Advocate General

W.P. No.3530 of 2006:

Medikonduru Milk Producers' Mutually Aided
Cooperative Society Limited, Medikonduru (v),
Medikonduru (M), Guntur District, rep. by its
President, N. Narasimha Rao, S/o. N. Mallikarjuna
Rao, Hindu, aged about 50 years, R/o.
Medikonduru village, Medikonduru Mandal,
Guntur District. .. Petitioner

Vs.

$ Government of Andhra Pradesh rep. by its
Secretary, Legislative Affairs & Justice,
Law Department, Secretariat, Hyderabad

and others .. Respondents

! Counsel for the petitioner : Sri V.V. Prabhakara Rao

^Counsel for the respondents : Advocate General

W.P. No.3576 of 2006:

Varagani Milk Producers' Mutually Aided Cooperative Society Limited, Varagani (v), Medikonduru (M), Guntur District, rep. by its President, D. Sambi Reddy, S/o. D. Ramakrishna Reddy, Hindu, aged about 50 years, R/o. Varagani village, Medikonduru Mandal, Guntur District. .. Petitioner

Vs.

$ Government of Andhra Pradesh rep. by its Secretary, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

! Counsel for the petitioner : Sri V.V. Prabhakara Rao

^Counsel for the respondents : Advocate General

W.P. No.3577 of 2006:

Chinapulivarru Milk Producers' Mutually Aided Cooperative Society Limited, Chinapulivarru (v), Kolluru (M), Guntur District, rep. by its President, Talluri Venkata Satyanarayana Murthy, S/o. T. Sreerama Murthy, Hindu, aged about 50 years, R/o. Chinapulivarru village, Kolluru Mandal, Guntur District .. Petitioner

Vs.

$ Government of Andhra Pradesh rep. by its Secretary, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

! Counsel for the petitioner : Sri V.V. Prabhakara Rao

^Counsel for the respondents : Advocate General

W.P. No.3624 of 2006:

Borra Rama Rao, Son of Sri Koteswara Rao,
49 years, Mulukuduru (V), Ponnur Rural
Mandal, Guntur District .. Petitioner

Vs.

$ The State of Andhra Pradesh, rep. by its
Secretary to Government of Andhra Pradesh,
Legislative Affairs & Justice, Law Department,
Secretariat, Hyderabad and others ..
Respondents

! Counsel for the petitioner : Sri B. Adinarayana Rao

^Counsel for the respondents : Advocate General

W.P. No.4327 of 2006:

Phanidam Milk Producers' Mutually Aided
Cooperative Society Limited, Phanidam (v),
Sattenapalli Mandal, Guntur District, rep. by
its President, P. Brahmaiah, S/o. Venkataramaiah,
Hindu, aged about 53 years, R/o. Phanidam
Village, Sattenapalli Mandal, Guntur
District and others .. Petitioners

Vs.

$ Government of Andhra Pradesh rep. by its
Secretary, Legislative Affairs & Justice,
Law Department, Secretariat, Hyderabad
and others .. Respondents

! Counsel for the petitioners : Sri V.V. Prabhakara Rao

^Counsel for the respondents : Advocate General

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Ø Head Note:

? CITATIONS:

1. 2004 (6) ALD 1 (LB)
2. AIR 2002 SC 350
3. (1996) 3 SCC 709
4. (2002) 4 SCC 34
5. AIR 1958 SC 731
6. 1991 Supp (1) SCC 600
7. AIR 1960 SC 554
8. AIR 1978 KARNATAKA 148 (FB)
9. AIR 1951 SC 318
10. (2004) 1 SCC 712 = AIR 2004 SC 1295
11. (1995) 5 SCC 730
12. AIR 1955 SC 166
13. (2001) 7 SCC 708
14. (1993) 3 SCC 677
15. (2001) 1 SCC 442
16. (1981) 1 SCC 722
17. (2003) 8 SCC 369
18. (2004) 11 SCC 526
19. AIR 1967 SC 1305
20. (2000) 1 SCC 168
21. (1996) 1 SCC 1
22. (1974) 4 SCC 3
23. (2003) 11 SCC 614
24. (1983) 1 SCC 305
25. 1992 Supp (1) SCC 594
26. 1986 (Supp) SCC 254
27. AIR 1961 SC 552
28. AIR 1958 SC 578
29. AIR 1958 SC 538
30. AIR 1968 Supreme Court 1379
31. AIR 1994 J & K 51

32. 2005 (6) ALD 582 (LB)
33. (2005) 6 SCC 537
34. (2002) 8 SCC 481
35. AIR 1951 SC 118
36. AIR 1954 SC 224
37. AIR 1963 SC 812
38. AIR 1958 A.P. 78
39. 1971 (1) SCC 678
40. AIR 1978 AP 121
41. AIR 1988 SC 1136
42. AIR 1965 SC 40
43. 1969 (1) SCC 853
44. AIR 1962 SC 171
45. AIR 1962 SC 458
46. AIR 1967 SC 829
47. (2004) 12 SCC 588
48. (1997) 8 SCC 522
49. (1997) 6 SCC 623
50. (1994) 5 SCC 450
51. (1983) 2 SCC 33
52. 1986 (Supp) SCC 584
53. 2006 (1) Decisions Today (SC) 352
54. (1997) 1 SCC 326
55. (1996) 7 SCC 637
56. (2003) 4 SCC 399
57. 1993 Supp (1) SCC 96 (II)
58. (1995) 6 SCC 16
59. AIR 1959 SC 308
60. (2001) 4 SCC 534
61. (2003) 4 SCC 739
62. (1987) 1 SCC 378
63. AIR 1965 Supreme Court 33
64. (2002) 9 Supreme Court Cases 1
65. 1984 (supp) SCC 244
66. AIR 1981 SC 1
67. (2003) 11 SCC 632

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HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Petition Nos. 2214, 2290, 2291, 2294, 2295, 2456, 2457, 3184, 3189, 3275, 3281, 3371, 3372, 3401, 3406, 3413, 3459, 3498, 3502, 3512, 3530, 3576, 3577, 3624, and 4327 of 2006

W.P. No.2214 of 2006:

Between:

Sri B. Narasimha Reddy, S/o Anantha Reddy, Aged about 68 years, Chairman, Nalgonda-Ranga Reddy District Milk Producers Coop. Union Ltd., Hayath Nagar, Hyderabad .. Petitioner

and

The State of Andhra Pradesh, rep. by its Secretary to Govt. of Andhra Pradesh, Legislative Affairs & Justice, Law Department, Secretariat, Saifabad, Hyderabad and others .. Respondents

Counsel for the petitioner : Sri S. Rama Chandra Rao

and Sri K.R. Prabhakar

Counsel for Respondent Nos.1, 2, 3 and 6 : Advocate General

Counsel for Respondent No.4 : --

Respondent No.5 : Deleted as per Court order dated 07-02-2006

Counsel for Respondent No.7 : Sri S. Satyanarayana

Prasad and
Kumari C. Sindhu
Kumari

Counsel for the Intervenor : Sri K.G. Kannabhiran

W.P. No.2290 of 2006:

Between:

Guntur District Milk Producers Mutually Aided Cooperative Union Ltd., (Sangam Dairy) at Vadlamudi, Guntur District rep. by its Chairman Sri K. Rajan Babu, S/o Krishnaiah, Aged about 50 years, resident of Grandhasiri Village, Atchampet Mandal, Guntur District and others .. Petitioners

and

Government of Andhra Pradesh rep. by its Secretary, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad and others ..
Respondents

Counsel for the petitioners : Sri B.V. Subbaiah

Counsel for respondent Nos.1, 2 and 4 : Advocate General

Respondent No.3 : Deleted as per Court order
dated 07-02-2006

W.P. No.2291 of 2006:

Between:

Krishna District Milk Producers Mutually
Aided Cooperative Union Ltd., Vijayawada,
Krishna District rep. by its Chairman Sri
M. Janaki Ramaiah, S/o Rathaiah, aged
About 74 years, R/o. Movva, Krishna
District and others .. Petitioners

and

Government of Andhra Pradesh rep. by its
Secretary, Legislative Affairs & Justice,
Law Department, Secretariat, Hyderabad
and others .. Respondents

Counsel for the petitioners : Sri B.V. Subbaiah

Counsel for respondent
Nos.1, 2 and 4 : Advocate General

Respondent No.3 : Deleted as per Court
order

dated 07-02-2006

W.P. No.2294 of 2006:

Between:

Sri C. Rajeshwar Rao, S/o Sri Kishan Rao,
Aged 49 years, Occ: Agriculture, R/o.
H.No.9-5-168/9/1, Saptagiri Colony,
Karimnagar, Karimnagar Dist.
and another .. Petitioners

and

The Government of A.P., rep. by its
Secretary, Legislative Affairs and Justice,
Law Department, Secretariat, Hyderabad
And others .. Respondents

Counsel for the petitioners : Sri G. Mohan Rao

Counsel for the respondents : Advocate General

W.P. No.2295 of 2006:

Between:

Sri Bhuma Narayana Reddy, S/o Linga Reddy, aged 62 years, Occ: Agriculture, R/o. H.No. W Kothapalli, Dornipadu Mandal, Kurnool Dist. and another .. Petitioners

and

The Government of A.P. rep. by its Secretary, Legislative Affairs and Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

Counsel for the petitioners : Sri G. Mohan Rao

Counsel for the respondents : Advocate General

W.P. No.2456 of 2006:

Between:

M. Gopal Krishna Choudary, S/o. Shri Venkanna, Aged 75 years, Chairman, Nellore District Milk Producers Co-operative Union Limited, Resident of South Amulur, Tothpalli, Gudur Mandal, Nellore District .. Petitioner

and

The State of Andhra Pradesh rep. by its Secretary to Government of Andhra Pradesh, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

Counsel for the petitioner : Sri D. Prakash Reddy

and

Smt. K. Bindu

Counsel for the respondents : Advocate General

W.P. No.2457 of 2006:

Between:

Challa Srinivas Rao, S/o Shri Kondayya,
Aged 42 years, Chairman, Prakasham
District Milk Producers Co-operative
Union Limited, resident of Ongole,
Prakasham District .. Petitioner

and

The State of Andhra Pradesh rep. by its
Secretary to Government of Andhra Pradesh,
Legislative Affairs & Justice, Law Department,
Secretariat, Hyderabad and others ..
Respondents

Counsel for the petitioner : Sri D. Prakash Reddy
and

Smt. K. Bindu

Counsel for the respondents : Advocate General

W.P. No.3184 of 2006:

Between:

Krishna District Milk Producers Mutually Aided
Cooperative Societies Association rep. by
G.V. Krishna Rao, S/o Rama Chandra Rao,
Aged about 51 years, Duddavaram village,
Gannavaram Mandal, Krishna District .. Petitioner

and

Government of Andhra Pradesh rep. by its
Secretary, Legislative Affairs & Justice,
Law Department, Secretariat, Hyderabad
and others .. Respondents

Counsel for the petitioner : Sri B.V. Subbaiah

Counsel for respondents : Advocate General

W.P. No.3189 of 2006:

Between:

West Godavari District Milk Producers Mutually Aided Cooperative Societies Association, rep. by Jallaparthi Udaya Bhaskara Rao, S/o. Subba Rao, aged about 42 years, R/o Nallajarla Post and Mandal, West Godavari District. .. Petitioner

and

Government of Andhra Pradesh rep. by its Secretary, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

Counsel for the petitioner : Sri B.V. Subbaiah

Counsel for respondents : Advocate General

W.P. No.3275 of 2006:

Between:

Cooperative Development Foundation (a society registered under the Andhra Pradesh Societies Registration Act) having its Office at 4-335/2, Sahavikasa Colony, Near Chintagattu Camp, Warangal represented by its President, Rama Reddy .. Petitioner

and

Government of Andhra Pradesh represented by its Secretary, Department of Legislative Affairs & Law, Secretariat, Hyderabad and others .. Respondents

Counsel for the petitioner : Sri S. Niranjan Reddy

Counsel for the respondents : Advocate General

W.P. No.3281 of 2006:

Between:

Kuchipudi Milk Producers' Mutually Aided Cooperative Society Limited, Kuchipudi (v), Amarathuluru (M), Guntur Dstrict, rep. by its President, Y. Suresh Babu, S/o Y. Anjaiah, Hindu, aged about 50 years, R/o. Kuchipudi Village, Amarathuluru Mandal, Guntur District .. Petitioner

and

Government of Andhra Pradesh rep. by its Secretary, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

Counsel for the petitioner : Sri V.V. Prabhakar Rao

Counsel for the respondents : Advocate General

W.P. No.3371 of 2006:

Between:

The Jillella Mutually Aided Milk Producers Cooperative Society Ltd., Jillella, Gosupadu Mandal, Kurnool Dist. rep. by its President Sri G. Sadasiva Reddy, S/o Ayyappa Reddy and others .. Petitioners

and

The Government of A.P., rep. by its Secretary,
Legislative Affairs and Justice, Law Department,
Secretariat, Hyderabad and others ..
Respondents

Counsel for the petitioners : Sri G. Mohan Rao

Counsel for the respondents : Advocate General

W.P. No.3372 of 2006

Between:
The Vijaya Milk Producers Mutually Aided
Cooperative Society Ltd., Thadikal,
Shankara Patnam Mandal, Karimnagar
Dist. rep. by its President Sri D. Narayana,
S/o Venkataiah and others .. Petitioners

and

The Government of A.P., rep. by its Secretary,
Legislative Affairs and Justice, Law
Department, Secretariat, Hyderabad
and others .. Respondents

Counsel for the petitioners : Sri G. Mohan Rao

Counsel for the respondents : Advocate General

W.P. No.3401 of 2006:

Between:

Guntur District Milk Producers Mutually
Aided Cooperative Societies Association
Rep. by K. Rajan Babu, S/o Krishnaiah,
Aged about 52 years, R/o Grandhasiri
Village, Atchampet Mandal, Guntur District .. Petitioner

and

Government of Andhra Pradesh rep. by its
Secretary, Legislative Affairs & Justice,
Law Department, Secretariat, Hyderabad

and others .. Respondents

Counsel for the petitioner : Sri B.V. Subbaiah

Counsel for the respondents : Advocate General

W.P. No.3406 of 2006:

Between:

Donepudi Milk Producers' Mutually Aided Cooperative Society Limited, Donepudi (v), Kolluri Mandal, Guntur District, rep. by its President, G. Konda Lakshmignanda Bhagaven, S/o Radha Krishna Murthy, Hindu, aged about 45 years, R/o. Donepudi Village, Kolluri Mandal, Guntur District .. Petitioner

and

Government of Andhra Pradesh rep. by its Secretary, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

Counsel for the petitioner : Sri V.V. Prabhakara Rao

Counsel for the respondents : Advocate General

W.P. No.3413 of 2006:

Between:

Patibandla Milk Producers' Mutually Aided Cooperative Society Ltd., Patibandla (V), Peddakorapadu (M), Guntur District rep. by its President, Yeruva Bala Reddy, S/o. Y. Chinnappa Reddy, Hindu, aged about 50 years, R/o. Patibandla village, Peddakorapadu Mandal, Guntur District .. Petitioner

and

Government of Andhra Pradesh rep. by its Secretary, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

Counsel for the petitioner : Sri V.V. Prabhakara Rao

Counsel for the respondents : Advocate General

W.P. No.3459 of 2006:

Between:

Athota Milk Producers' Mutually Aided Cooperative Society Limited, Athota (V), Kollipara Mandal, Guntur District, rep. by its President, K. Koteswara Rao, S/o. Venkata Ramnamma, Hindu, aged about 63 years, R/o. Athota village, Kollipara Mandal, Guntur District. .. Petitioner

and

Government of Andhra Pradesh rep. by its Secretary, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

Counsel for the petitioner : Sri V.V. Prabhakara Rao

Counsel for the respondents : Advocate General

W.P. No.3498 of 2006:

Between:

Guddikayalanka Milk Producers' Mutually Aided Cooperative Society Limited, Guddikayalanka (v), Repalle Mandal, Guntur District, rep. by its President, Gummadi Roopchand, S/o. Venkata Subbaiah, Hindu, aged about 50 years, R/o. Guddikayalanka village, Repalle Mandal, Guntur District .. Petitioner

and

Government of Andhra Pradesh rep. by its Secretary, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad

and others .. Respondents

Counsel for the petitioner : Sri V.V. Prabhakara Rao

Counsel for the respondents : Advocate General

W.P. No.3502 of 2006:

Between:

Mulkanoor Women Mutually Aided Milk
Producers Cooperative Union Limited,
Bheemdeverapally Village & Mandal,
Karimnagar District, rep. by its
President Smt. V. Vijaya .. Petitioner

and

Government of Andhra Pradesh rep. by its
Secretary, Animal Husbandry, Dairy
Development & Fisheries (Dairy II) Department,
Secretariat Buildings, Hyderabad and another .. Respondents

Counsel for the petitioner : Sri S. Chakrapani

Counsel for the respondents : Advocate General

W.P. No.3512 of 2006:

Between:

Vemuru Milk Producers' Mutually Aided
Cooperative Society Limited, Vemuru (V),
Vemuru Mandal, Guntur District, rep. by
its President, Ganta Venu, S/o. G. Sambasiva
Rao, Hindu, aged about 30 years, R/o.
Vemuru village, Vemuru Mandal, Guntur
District and others .. Petitioners

and

Government of Andhra Pradesh rep. by its
Secretary, Legislative Affairs & Justice,
Law Department, Secretariat, Hyderabad
and others .. Respondents

Counsel for the petitioners : Sri V.V. Prabhakara

Rao

Counsel for the respondents : Advocate General

W.P. No.3530 of 2006:

Between:

Medikonduru Milk Producers' Mutually Aided Cooperative Society Limited, Medikonduru (v), Medikonduru (M), Guntur District, rep. by its President, N. Narasimha Rao, S/o. N. Mallikarjuna Rao, Hindu, aged about 50 years, R/o. Medikonduru village, Medikonduru Mandal, Guntur District. .. Petitioner

and

Government of Andhra Pradesh rep. by its Secretary, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

Counsel for the petitioner : Sri V.V. Prabhakara Rao

Counsel for the respondents : Advocate General

W.P. No.3576 of 2006:

Between:

Varagani Milk Producers' Mutually Aided Cooperative Society Limited, Varagani (v), Medikonduru (M), Guntur District, rep. by its President, D. Sambi Reddy, S/o. D. Ramakrishna Reddy, Hindu, aged about 50 years, R/o. Varagani village, Medikonduru Mandal, Guntur District. .. Petitioner

and

Government of Andhra Pradesh rep. by its Secretary, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

Counsel for the petitioner : Sri V.V. Prabhakara Rao

Counsel for the respondents : Advocate General

W.P. No.3577 of 2006:

Between:

Chinapulivarru Milk Producers' Mutually Aided Cooperative Society Limited, Chinapulivarru (v), Kolluru (M), Guntur District, rep. by its President, Talluri Venkata Satyanarayana Murthy, S/o. T. Sreerama Murthy, Hindu, aged about 50 years, R/o. Chinapulivarru village, Kolluru Mandal, Guntur District .. Petitioner

and

Government of Andhra Pradesh rep. by its Secretary, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

Counsel for the petitioner : Sri V.V. Prabhakara Rao

Counsel for the respondents : Advocate General

W.P. No.3624 of 2006:

Between:

Borra Rama Rao, Son of Sri Koteswara Rao, 49 years, Mulukuduru (V), Ponnur Rural Mandal, Guntur District .. Petitioner

And

The State of Andhra Pradesh, rep. by its Secretary to Government of Andhra Pradesh, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

Counsel for the petitioner : Sri B. Adinarayana Rao

Counsel for the respondents : Advocate General

W.P. No.4327 of 2006:

Between:

Phanidam Milk Producers' Mutually Aided Cooperative Society Limited, Phanidam (v), Sattenapalli Mandal, Guntur District, rep. by its President, P. Brahmaiah, S/o. Venkataramaiah, Hindu, aged about 53 years, R/o. Phanidam Village, Sattenapalli Mandal, Guntur District and others .. Petitioners

and

Government of Andhra Pradesh rep. by its Secretary, Legislative Affairs & Justice, Law Department, Secretariat, Hyderabad and others .. Respondents

Counsel for the petitioners : Sri V.V. Prabhakara Rao

Counsel for the respondents : Advocate General

:: COMMON ORDER ::

Date:01-05-2007

Per G. Bhavani Prasad, J.

The constitutional and legal validity of the Andhra Pradesh Mutually Aided Co-operative Societies (Amendment) Ordinance 2 of 2006 and the consequential Government Orders and Proceedings are under challenge in this batch of writ petitions. On replacement of the Ordinance by the Andhra Pradesh Mutually Aided Co-operative Societies (Amendment) Act 20 of 2006, W.P. No.3275 of 2006 was permitted to be amended for the purpose of

challenging the constitutionality and vires of the Amendment Act without the necessity of filing formal applications for the purpose in the other petitions.

The Andhra Pradesh Co-operative Societies Act, 1964 is hereinafter referred to as "1964 Act" and the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 is referred to as "1995 Act". The Andhra Pradesh Dairy Development Corporation is referred to as "the Corporation" and the Andhra Pradesh Dairy Development Co-operative Federation Limited is referred to as "the Federation".

The Chairmen of the District Milk Producers Co-operative Unions of Nalgonda - Ranga Reddy, Krishna, Karimnagar, Kurnool, Nellore, Prakasam and Guntur filed Writ Petition Nos.2214, 2291, 2294, 2295, 2456, 2457 and 2290 of 2006.

The District Milk Producers Mutually Aided Co-operative Societies Associations of Guntur, Krishna and West Godavari filed Writ Petition Nos.3401, 3184 and 3189 of 2006.

Co-operative Development Foundation, a society registered under the Andhra Pradesh Societies Registration Act, filed Writ Petition No.3275 of 2006.

Mulkanoor Women Mutually Aided Milk Producers Co-operative Union Limited, directly registered under 1995 Act with 101 member village dairy co-operative societies, filed Writ Petition No.3502 of 2006.

Writ Petition No.3372 of 2006 was filed by 435 Primary Milk Producers Co-operative Societies of Karimnagar district, the majority of which were converted from 1964 Act to 1995 Act, some were directly registered under 1995 Act and some are awaiting

registration under 1995 Act.

The remaining writ petitions were filed by Primary Milk Producers Co-operative Societies, which were converted from 1964 Act to 1995 Act.

The National Dairy Development Board was originally shown as respondent in some writ petitions, but was permitted to be deleted.

Miscellaneous petitions were filed by Sri Basavaraju Saraiah, M.L.A., Warangal, Indian National Trade Union Council, Hyderabad represented by its Secretary and Velivolu Milk Producers
Co-operative Society Limited requesting to be impleaded to intervene and oppose the writ petitions.

Pending the writ petitions, interim directions were given staying the operation of G.O. Ms. No.10, dated 04-02-2006 and orders dated 04-02-2006 issued by the Registrar and allowing the elected bodies of the District Unions and other societies to continue subject to the condition that they shall not take any policy decision until the final adjudication of the writ petitions and shall not incur any expenditure except payment of dues to the milk producers, salaries of the employees and other statutory dues.

ORDINANCE / ACT AND CONSEQUENTIAL ORDERS:

The Andhra Pradesh Mutually Aided Co-operative Societies (Amendment) Ordinance 2006, Ordinance 2 of 2006 was promulgated and published in the Andhra Pradesh Gazettee on 01-02-2006. By Section 1 (3), the Ordinance shall be deemed to have come into force with effect from 01-06-1995. Section 2 of the Ordinance amended Section 2 (d) of the Principal Act substituting the words “under the provisions” for the words “under Section 7” and adding at the end the words “but does not include the

Milk/Dairy

Co-operative Societies". Section 4 of the Principal Act was amended by Section 3 of the Ordinance by substituting the expression "under the provisions" for "under section 7" in sub-section (1) and adding a Proviso to sub-section (1), namely—

> "Provided that no Co-operative Society shall be registered as a dairy or milk Co-operative Society and no dairy or milk Co-operative Society registered under any other law shall be converted into a Dairy or Milk
> Co-operative Society under this Act".

After sub-section (1), sub-section (1A) was added as follows:

> "(1A) Notwithstanding anything contained under this Act or under the provisions of the Andhra Pradesh Co-operative Societies Act, 1964, all the Dairy/Milk Co-operative Societies registered or deemed to have been registered or converted under the provisions of this Act, shall be deemed to have been excluded from the provisions of this Act and deemed to have been registered and continued under the provisions of the Andhra Pradesh Co-operative Societies Act, 1964".

The Ordinance was repealed and replaced by A.P. Act 20 of 2006 with identical provisions which was published in the Andhra Pradesh Gazettee dated 12-04-2006.

In the Statement of objects and reasons appended to L.A. Bill No.2 of 2006, which was later enacted into A.P. Act 20 of 2006, it was stated that the registration or conversion of Dairy/Milk Co-operative Societies under 1995 Act is resulting in adverse effects on the interest of the dairy farmers. The recommendations of the House Committee to exclude all Dairy Co-operatives from 1995 Act and to restore the 3-tier structure under 1964 Act were referred to. It was also observed that there were similar

restrictions in Karnataka and Madhya Pradesh against registration or conversion of a society into a mutually aided co-operative society. The statement of objects and reasons further stated that —

> "In Andhra Pradesh a large number of Dairy Co-operative Societies which are having Government Loans, movable and immovable assets acquired with the Government Share capital, Loan and Guarantee, functioning under the 3-tier structure, with the Andhra Pradesh Dairy Development Federation as Apex Body under "Anand pattern", Gujarat, have been converted into Mutually Aided Co-operative Societies under the said 1995 Act, without returning the share capital, Government Loan/Guarantee, and the assets acquired with Government Share capital or without entering into Memorandum of Understanding with Government for any such outstanding loans or guarantees required under Section 4 (3) (e) of Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995, and in some cases conversion was made conditionally. However, so far no society has return(ed) the said Government share capital, Loan guarantee, etc. Further the dairy farmers are facing severe problems under the said Mutually Aided Co-operative Societies institutions.
>
> It is also observed that, most of the persons supplying milk to these Dairies are farmers for whose purpose the Government has organized the Primary Agricultural Co-operative Societies and assisting them in the form of share capital, loan, guarantee, subsidies and other infrastructure to improve the agriculture production and to assist them economically and the dairy activity is a subsidiary activity of these farmers.
>
> Experience has shown that for the last 5 years there is continuous drought in Andhra Pradesh and consequent crop failures, death (dearth) of cattle feed leading to commission of suicide by large number of farmers and death of milk-cattle. Therefore, the

Government has taken up the cause of all types of farmers on top priority and prepared various plans to augment the agriculture and allied activities.

1. Recently one of the District Co-operative Milk Unions got itself registered as a Producer Company illegally under the Companies Act, 1956. The other District Co-operative Milk Unions may also follow the same way. Hence, there is an imminent danger of large extent of government assets of huge value built with The letter No. 5126/Dairy.II (1)/2003, dated 11-09-2003 from the Principal Secretary to Government, Animal Husbandry, Dairy Development and Fisheries Department to the Managing Director of the Federation, referred to the review of the performance of dairy sector in the State on 26-08-2003 with the Chief Secretary, wherein the Chairmen of several District Milk Unions also participated. It was further stated that consequent on the discussions had, the decisions enumerated were arrived at in the meeting, the first of which was to take steps to register the Federation as State Marketing Federation under 1995 Act. It was also further decided that MATA Federation shall cease to exist from the date of such registration and Guntur and Visakha Unions shall join the State Marketing Federation. It was also decided to register all the Milk Sheds of the Federation under 1995 Act and discourage formation of new Primary Societies/District Unions under 1964 Act. Decisions were further taken regarding the operation of Milk Production Factory, Hyderabad under the Federation, marketing activities of respective Unions, marketing the products of the District Unions by the State Federation and supply of

products as indented by the Federation for which payments are to be made as agreed upon.

It is self-evident from this letter that bringing the entire dairy sector under 1995 Act was considered and discouraging any new societies under 1964 Act were the decisions which could not have been taken if the dairy sector suffered from disadvantages due to functioning under 1995 Act till that time.public funds going into private hands. In order to prevent this and protect Government assets built up and developed with public money Government feels that there is urgent need to exclude Dairy/Milk Co-operative Societies from the purview of Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995."

In pursuance of the Ordinance, G.O.Ms. No.10 Animal Husbandry, Dairy Development & Fisheries (Dairy-II) Department, dated 04-02-2006 was issued stating that consequent to the promulgation of the Ordinance, the Managing Committees of the societies ceased to exist and elections as per 1964 Act have to be conducted afresh. As it takes some time to conduct the elections, it was stated to have been felt necessary to make interim arrangements to provide management to the societies to avoid vacuum. Accordingly the Milk Commissioner and Registrar of Milk Co-operatives were directed to take action to appoint concerned District Collectors as Official Persons-in-charge in respect of eight district unions under Section 32 (7) of the 1964 Act. The Government orders further authorized the District Collectors to appoint persons-in-charge similarly to the Primary Milk Producers Co-operative Societies.

Consequently, the Milk Commissioner and Registrar for Milk Co-operatives have issued the proceedings dated 04-02-2006 respectively appointing the District Collectors concerned as the

Person-in-charge for the respective district unions.

GROUNDS OF CHALLENGE:

1. The intention of the legislature in enacting the 1995 Act is to enunciate the co-operative principles and promote voluntary, self-reliant, self-financing and autonomous co-operative societies away from State control as per their own bye-laws. The Act enabled conversion of the societies registered under 1964 Act into societies under 1995 Act. After conversion of 8 district unions into 1995 Act, elections were conducted for the Board of Directors, and Chairmen were elected who are entitled to continue till the expiry of their terms. There is no provision to reverse the conversion into 1995 Act back to 1964 Act. Elaborate procedure is prescribed by 1995 Act for liquidation in case of misconduct or misdemeanors or defaults, but no special officers can be appointed unlike under 1964 Act.

2. Nalgonda-Rangareddy District Union cleared dues of Rs.13,000.00 crores in six years and the mother dairy is collecting one lakh litres of milk from Nalgonda-Rangareddy districts per day. The union is selling 1.40 lakhs of litres of milk every day. It is making milk powder, which is popular. The mother dairy is extending various subsidies to farmers for feed, pesticides, fodder and seeds. There are 700 milk collecting centers and 364 societies in the two districts. The 8 district unions are controlled or managed by non-congress people and the State resorted to an inelegant legislative device to take direct control of the district unions, which is demonstrably colourable exercise of legislative power.

3. The Ordinance and the Government orders, etc., were

issued on the evening of a Saturday to prevent the affected parties from approaching Court and present a fait accompli situation depriving the elected Chairmen and members of their rights in an extremely arbitrary and capricious manner.

4. By retrospective operation, actual events that happened such as functioning, registration and all activities conducted and completed, as a matter of fact, cannot be reversed by a deeming provision. Any retrospective Act can impose additional burdens or obligations or give additional concessions. But the factual registration and actual functioning for ten years cannot be annihilated. The power to enact retrospective laws has two basic exceptions against creation of retrospective crimes or affecting fundamental rights by reason of taking away vested rights. As observed by the Supreme Court, a Legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of 20 years. That would be most arbitrary, unreasonable and a negation of history. Any retrospective operation must be shown ex facie or through extrinsic evidence to bear reasonable nexus with the provision especially when the effect extends over a long period. Any fiction of law cannot run counter to a factual situation.

5. Deprivation of the elected representatives of their assured term of office under 1995 Act without any cause, is capricious and arbitrary exercise of legislative power. The vested right of the Chairmen and the members elected for a term cannot be retrospectively taken away.

6. Assuming that the Ordinance is valid, the Chairmen and

members are deemed to be elected under 1964 Act and they are entitled to continue till expiry of their term. The impression that no committee exists due to the Ordinance is mistaken and in the absence of rules prescribed regarding the class of societies, Section 32 (7) of 1964 Act cannot be resorted to appoint persons incharge. The appointment of special officers is contrary to the Ordinance itself, which intended to continue the societies by Section 1A.

7. Expropriation of the societies by throwing out validly elected people is arbitrary, capricious and in violation of Article 14 of the Constitution. The lawless law to obliterate the societies is not a normal legislative exercise of power and smacks of vindictiveness and abuse of power.

8. Nalgonda-Rangareddy District Union supplied ghee worth Rs.66.00 lakhs to Tirumala Tirupathi Devastanams during September, 2002 and the Federation collected the money through Chittoor District Union, but did not pay. The amount due comes to Rs.1.00 crore, and Rs.50.00 lakhs of Nalgonda-Rangareddy Union kept in revolving fund with the Government were given to Chittoor Union and were not restored. A total of Rs.2.00 crores were withdrawn and diverted by the Federation to other entities. The commercial tax officer by seizing the bank account of Nalgonga-Rangareddy Union, collected Rs.36.00 lakhs sales tax on the supplies made to Tirumala Tirupathi Devastanams in spite of exemption. Any defaults are traceable, thus, to the Federation.

9. The National Dairy Development Board specifically advised the authorities not to remove the societies from 1995 Act and informed that no further aid will be forth-coming, if such

a thing is done.

10. The 1995 Act was enacted under inspiration from the Central Government headed by the then Prime Minister Sri Rajiv Gandhi and guided by the National Dairy Development Board. Krishna District Union almost unanimously opted for registration under 1995 Act. While the district unions and primary societies are thriving very well under 1995 Act, politically motivated efforts started with W.P. No.23050 of 2004 by Sri Saraiah, an Ex-M.L.A. of congress, as a public interest litigation to retrieve the so-called assets of the Government from the district unions. The Government as the respondent is supporting the petitioner therein.

11. When the Registrar of Co-operative Societies issued instructions to cancel the registration of the district unions without any authority or reasons, the District unions were compelled to file writ petitions, which are pending. The candidates set up by the party in power miserably lost in the elections. The Krishna Union filed a petition before the Co-operative Tribunal to determine the value of items supposedly belonging to the Government, which is pending. The Ordinance is intended to freely interfere with the management and affairs of the milk producers and wholly discriminatory, irrational, motivated, mala fide and unconstitutional.

12. The farmers are by and large one class and some farmers owning cattle produce milk. There is no division like milk producing farmers and non-milk producing farmers. The milk producers are entitled to equality before law and equal protection of laws. The milk producing farmers cannot be denied the benefits and privileges under 1995 Act. There is

no rational basis for the classification and the unreasonable classification has no nexus or relation to the object sought to be achieved.

13. The farmers are given highest procurement price after 1995 Act. Almost all the units and machinery are acquired by the unions and not by the Government and any Government properties are of nil value now. Any enjoyment of Government assets by co-operative unions cannot be a ground for removing the societies from the purview of 1995 Act.

14. Since 1995 Act about 6000 societies of milk producers were converted or formed, but the House Committee inspected only three societies, out of which two societies became defunct while functioning under 1964 Act. The National Dairy Development Board took them over by meeting their dues and got them registered under 1995 Act with the approval and consent of the Government. Out of 6000 societies and 10 unions, the alleged properties of the Federation or the Government are with only two or three unions.

15. The fundamental right of the farmers to choose either of the two enactments is taken away.

16. Since conversion into 1995 Act, the Karimnagar District Union increased its procurement from 50,000 litres to 80,000 litres, earned a profit of Rs.1.3 crores during 2003-04 and Rs.65.00 lakhs in the current year ending with January, 2006. The conversion was as per the unanimous decision of the members of the 8 district unions. With the change of Government in May, 2004, efforts started to regain control over the district unions to have access to

their funds. Issuance of revised certificates of registration and show cause notices were challenged before the High Court, which suspended the show cause notices.

17. The milk co-operative societies have to be treated on par with all other co-operative societies like Fishermen Co-operative Societies, Sheep Breeders Co-operative Societies, etc. The distinction sought to be made is not based on any valid and intelligible criteria but is artificial. The classification has no nexus with the object of 1995 Act.

18. Freedom to form associations or unions is guaranteed under Article 19 (1) (c) of the Constitution and the conversion from 1995 Act to 1964 Act without the consent and volition of the members of the societies is in violation of the said fundamental right. The supersession of the elected governing bodies is in violation of the basic structure of the constitution and official persons incharge cannot be foisted against the wishes of the societies. The Government cannot bring legislative changes reversing their own earlier decisions without any valid reasons or public interest. The backward step to subvert the milk co-operative societies is not in public interest.

19. No amendments are made to 1964 Act which prescribes a procedure and requirements for registering a voluntary society as a co-operative society. Without complying with that procedure, no fiction can be created to say that all the milk or dairy co-operative societies have to be deemed to be registered under 1964 Act. The deeming provisions and the deemed registration are contrary to 1964 Act and void.

20. There was absolutely no urgency for invoking the Ordinance making power just before the budget session of the

Assembly since 14-02-2006. It was to avoid a debate on the floor of the Assembly.

21. The Kurnool District Union increased the procurement of milk to 161.41 lakh litres from 3 lakh litres and earned considerable profits since its conversion. The profits up to January, 2006 in the current year are Rs.1.20 crores.

22. An unfair and odious discrimination between a homogeneous and uniform group of co-operative societies in the State is introduced without any justifiable reason or plausible explanation for excluding 6000 milk cooperative societies alone from 15000 other mutually aided co-operative societies under 1995 Act. The Ordinance is an affront to Article 13 (2) of the Constitution, which prohibits the legislature from making any law which takes away or abridges the equality clause in Article 14.

23. In 1985 the assets were mostly land, few plants and machinery in Krishna and Visakhapatnam districts. It was later, the district unions improved the units investing huge amounts and hard labour by purchasing machinery like chilling plants, pasteurization units, packing units, collection equipment centers, storage plants and transport vehicles. They also purchased other equipment for making dairy products like cheese, butter, ghee and other products and for converting milk into milk powder. The district unions developed dairy activities by leaps and bounds and increased their turnover by several times. The erstwhile staff of the Federation were absorbed and crores of rupees were paid to them towards salaries and other benefits.

24. Recommendations of the study groups headed by Sri Brahma Prakash and Sri Ramakrishnayya were taken

into consideration while drafting the 1995 Act and 3428 co-operative societies got converted into 1995 Act as on 31-03-2005, while another 10,463 new co-operative societies were voluntarily formed and registered under 1995 Act. 7,494 of these societies are functioning in thrift sector and 3,599 are functioning under dairy sector. The reformative provisions of 1995 Act were similarly enacted in 8 other States due to the vibrancy the Act imparted to the co-operative movement. No grounds are made out or established for restricting the fundamental right of freedom of association and the very expression 'Co-operative society' takes within its inherent context the element of voluntarism. The provisions of the Ordinance without any element of voluntarism or discretion are beyond and in excess of the legislative competence and power.

25. The Ordinance strikes at the spirit of Articles 38, 39, 43 and 48 of Directive Principles in Part-IV of the Constitution. The discrimination against the co-operative societies from other entities like corporations and companies runs counter to the stated public policy of the Central and State Governments for greater liberlisation. The relevant fact of greater financial vigour of the societies resulting in better benefits to the members, was not studied. The co-operative societies and the co-operative movement will be completely destroyed if controlled and administered under 1964 Act.

26. The primary milk co-operative societies do not owe any money to the Government and are not in possession or control of any Government properties.

27. Societies which were directly registered under 1995 Act cannot be converted into 1964 Act without their consent.

28. Mulkanoor Women Mutually Aided Milk Producers Co-operative Union Limited (W.P. No.3502 of 2006) increased its membership from 72 to 101 village dairy co-operative societies between 2000 and 2006 and increased milk procurement from 6000 litres to 17,849 litres of the value of Rs.24.24 lakhs to Rs.53.00 lakhs. The milk sales went up from Rs.9.30 lakhs to Rs.82.53 lakhs. The society declared bonus to the producers and substantially discharged its loans. It is encouraging thrift among the members by compulsorily organizing Vikasa Podupu scheme, which swelled from Rs.11.88 lakhs to Rs.1.13 crores. The Ordinance is vitiated by non-application of mind and irrelevant and extraneous considerations. This society directly formed under 1995 Act has to retain its character and there is no justification to bring such a society with about 15,000 women members under a nominated agency.

COUNTER-AFFIDAVITS:

1. The State of Andhra Pradesh is an agricultural State with more than 80% rural population depending only on agriculture and till 1960 milk production was unorganized and confined to household. The State Government with the assistance of UNICEF commenced Integrated Milk Project in 1960 and rural surplus milk of Krishna, West Godavari and Guntur districts was procured in villages, transported to chilling centers and was supplied to consumers of Hyderabad. A milk conservation plant/milk products factory was established in 1969 at Vijayawada, which crossed a handling of 1.00 lakh litres of milk per day within one year.
2. An independent Dairy Development Department was carved

out in 1970-71 and by 1974 the intensive efforts to give a boost to the dairy development activity resulted in the Central Dairy, Hyderabad with six chilling centers and seven cooling centers attached, the milk products factory, Vijayawada with 14 chilling centers attached, feeder dairies at Warangal, Karimnagar, Nizamabad, Rajahmundry, Visakhapatnam, Nellore, Chittoor, Mydukuru, Anantapur and Kurnool, milk chilling centers at Srikakulam and Ramabhadrapuram and milk cooling centers at Nirmal and Kothagudem already coming into operation.

3. In 1974, all the dairy development activities were transferred to the Andhra Pradesh Dairy Development Corporation Limited, a company under the Indian Companies Act, 1956, fully owned by the State Government from the Dairy Development Department transferring all the infrastructure and assets including feed mixing plants to it. The employees of the Dairy Development Department were absorbed in the Corporation and the entire assets and dairy infrastructure of the Corporation, thus, belonged to the State Government built at the cost of public exchequer. The State Government continuously provided funds to the Corporation.

4. The Government sanctioned a working capital of Rs.150.00 lakhs, additional working capital loan of Rs.100.00 lakhs and plan grant of Rs.85.00 lakhs in 1974-75 and entrusted the Corporation with the responsibility of implementing the Operation Flood Programme in the State, under which a Feeder Balancing Dairy at Sangamjagarlamudi in Guntur district with a handling capacity of 1.5 lakh litres per day was taken up and Milk Producers Co-operative Societies in Guntur district were organized. In 1975-76, the Government

gave Rs.225.38 lakhs towards the share capital of the Corporation including Rs.50.00 lakhs for Feeder Balancing Dairy at Sangamjagarlamudi. Plan funds of Rs.150.60 lakhs and six point formula funds of Rs.32.38 lakhs were used for commissioning a chilling center at Ongole and strengthening the dairies at Visakhapatnam, Chittoor, Mydukuru and Kurnool. In 1976-77, the Government contributed Rs.174.18 lakhs towards share capital and provided Rs.272.85 lakhs under various schemes. A joint venture milk products factory with 1.5 lakh litres per day capacity was established at Proddutur, which was later taken up exclusively by the Corporation at a total cost of Rs.330.00 lakhs. In 1977-78, the Government support was to a tune of Rs.357.017 lakhs. As on 31-03-1978, 14 main dairies and chilling and cooling centers were in operation including 5 dairies at Visakhapatnam, Vijayawada, Sangam, Nellore and Karimnagar. The Feeder Balancing Dairy, Sangam was handed over to the Guntur District Milk Producers Co-operative Union Limited, a co-operative society registered under the Andhra Pradesh Co-operative Societies Act, 1964 with effect from 01-08-1978. The Government continued its assistance to the Corporation to a tune of Rs.538.250 lakhs in 1978-79, Rs.380.456 lakhs in 1979-80 and Rs.219.030 lakhs in 1980-81. In 1979-80 the Second Spray Drying Plant at milk products factory, Vijayawada at a cost of Rs.196.00 lakhs and milk products factory at Nandyal at a cost of Rs.565.00 lakhs were taken up. A second dairy at Hyderabad with handling capacity of 2.00 lakh litres per day at a cost of Rs.550.00 lakhs was also proposed under Operation Flood-II Programme. In addition

to the dairy infrastructure, the Corporation established a vast dairy network with the participation of dairy farmers through farmers co-operative societies paying extra for the procured milk as an incentive. The Corporation developed 'Vijaya' brand as a strong national brand next only to Amul and the goodwill and brand value are significant assets apart from the physical assets built by the Corporation.

5. The Government of India provided assistance to replicate 'Anand' model of Gujarat in other States and Dr. Verghese Kurien helped Gujarat farmers to evolve a 3-tier co-operative model with a village dairy co-operative, a district milk union and a state level federation handling production and procurement, processing and packaging and marketing respectively. The Andhra Pradesh Dairy Development Corporation organized co-operatives and provided incentives accordingly and Visakhapatnam Marginal Farmers, Agriculture Labourers and Milk Producers Co-operative Dairy Development Union was also registered. In 1980, the State Government adopted Anand pattern for all the districts and decided to set up Andhra Pradesh Dairy Development

Co-operative Federation Limited to cover the whole State in place of the Corporation, with the Guntur District Milk Producers Co-operative Union and to bring other district unions within its fold. The Andhra pradesh Dairy Development Co-operative Federation Limited was registered as a

co-operative society under the Andhra Pradesh Co-operative Societies Act, 1964 on 01-10-1981 with the Guntur union and the State Government as the original ordinary

members and the initial share capital provided totally by the Government. The State Government also transferred the entire assets and dairy infrastructure developed over the years with public finances and under the ownership of the Corporation to the Federation on lease basis for a rent of Rs.1,000/- per annum. The State Government also stood guarantee for the repayment of the loan component and financial assistance provided by Indian Dairy Corporation (now National Dairy Development Board) under Operation Flood-II. Rs.59,74,80,000.00 were borrowed by the Federation in 1982, out of which Rs.22,45,22,800.00 were treated as a grant. Sixteen out of 23 districts of the State were covered by Operation Flood-II and between 1981-82 and 1984-85, the Federation carried out establishment of new dairy units and expansion of the existing units at a cost of Rs.903.74 lakhs. The second Spray Drying Plant of 15 metric ton capacity at Vijayawada, Milk Products Factory at Nandyal and second dairy at Hayathnagar apart from strengthening milk chilling centers in five districts and cattle feed plants in two districts, were carried out. The second dairy at Hayathnagar costed Rs.739.38 lakhs. Thus, 7 out of 8 dairies under contention in the writ petitions were established by 1985, while Ongole dairy was taken up between 1991 and 1995.

6. District Milk Unions at Krishna, Visakhapatnam, Kadapa, Prakasam and Godavari were registered as co-operative societies between 1983 and 1985. Proddutur Milk Foods Limited was brought under the fold of Kadapa District Milk Producers Co-operative Union. Between 1985-86 and 1989-90, the Federation received Ford foundation funds and

grants and assistance of a total of Rs.1528.46 lakhs from the State Government and Rs.2187.11 lakhs from the Central Government. District Unions of Nalgonda-Rangareddy, Nellore, Chittoor and Kurnool were registered under the Andhra Pradesh Co-operative Societies Act, 1964 in 1986, 1988 and 1989 respectively.

7. As per G.O. Ms. No.551, dated 10-12-1980 the State Government permitted the Federation to hand over the management of the respective units and operations to the respective District Units subject to the conditions and stipulations given in the draft agreement. Among other things, the District Unions have to abide by the directives of the Federation, not to recruit fresh staff, etc., and the Managing Director of the Federation entered into agreements of transfer, loans and grants with 9 district unions between 1985 and 1990. The district unions were given only management of the Government assets, but not ownership and all further assets were built on the business and assets created earlier. All the activities taken up by the district units are in their capacity as managers and not as owners. Persons responsible for management cannot appropriate the assets. Between 1991 and 1995, the benefits and financial assistance from the State and Central Governments were Rs.159.45 lakhs and Rs.729.97 lakhs respectively. The Federation with the loan of Rs.1466.00 lakhs from National Dairy Development Board, for which the State Government stood guarantee, constructed milk products factory at Ongole in this period with a total cost of Rs.237.00 lakhs provided by NCDC and the State Government at 60% and 40% respectively. The district

administration also contributed funds for development of dairy infrastructure and strengthening procurement activities on a continuous basis. Thus, all the eight district dairies were established by the Corporation and Federation with the support of the State and Central Governments.

8. The Board of management of the Federation has representatives of all the district milk unions, State Government nominees and nominee of the National Dairy Development Board with the Managing Director as the Executive Head. The Co-operative dairy sector was divided into Federation, Milk Sheds and District Milk Unions with the milk sheds under the direct control of the Federation in non-viable districts. Thus, the Federation supervised the entire dairy activity in the State. Karimnagar district union was registered as a Co-operative society and the management was handed over under the transfer agreement dated 12-10-1998.

9. The Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 provided for the existing co-operative societies registered under the Andhra Pradesh Co-operative Societies Act, 1964 to opt for the later Act with certain conditions. The definition of a 'co-operative society' under Section 2(d) of 1995 Act prohibits raising any share capital from the Government and provides for return of share capital of the Government apart from entering into a memorandum of understanding for outstanding loans and guarantees or return of the Government assistance. Evidence in this regard is a must for conversion under Section 4(3)(e) of 1995 Act. The District Milk Unions violated these statutory

provisions. When Visakha Milk Union sought for conversion, the Federation objected to the same on statutory grounds and deviation from the Government policy. The Milk Commissioner directed registration of the unregistered Milk Producers Associations under 1995 Act and to convert Primary Milk Co-operative Societies as Vijaya Milk Producers Mutually Aided Co-operative Societies at the village level under 1995 Act. The district or village societies were never encouraged to violate the statutory provisions. When Krishna Milk Union sought for conversion, the Federation required entering into a memorandum of understanding, a provision in the bye-laws on service conditions of the employees and transfer of assets subject to the final verdict of the High Court in W.P. No.25062 of 2000. Though a conditional certificate of registration was issued, the same is ab initio void, as Krishna Milk Union did not fulfill the conditions. The other district milk unions also got themselves registered under 1995 Act illegally without meeting the statutory requirements. The Registrar of Mutually Aided Co-operative Societies, Andhra Pradesh issued a show cause notice dated 29-11-2004 to all the district unions to show cause as to why the registration under 1995 Act shall not be cancelled due to not entering into memoranda of understanding as required by Section 4(3)(e) of 1995 Act. The district unions filed eight writ petitions in W.P. No.23429 of 2004 and batch, in which the High Court suspended the show cause notice as without jurisdiction. The writ petitions are pending adjudication.

10. In October, 2004, the Registrars of the Andhra Pradesh

Mutually Aided Co-operative Societies of the concerned districts revised the certificates of registration except in respect of Guntur Milk Union indicating that the registration is subject to entering into the required memoranda of understanding. The registration is, thus, conditional and is void ab initio due to non-compliance with the conditions. The Federation filed original petitions in various Co-operative Tribunals seeking dissolution of the societies under Section 40 of 1995 Act, since the statutory requirements were not complied with. As Prakasam Milk Union entered into a memorandum of understanding with the Federation on

09-12-2003 for three years from 15-10-2002, the original petition against it was withdrawn. The Co-operative Tribunal dismissed the original petition against the Visakha District Union by an order dated 19-11-2004 on the ground that the Statute did not mention about return of assets and the Managing Director had no power to sub-delegate the power to file the petition. The order of the Co-operative Tribunal is under challenge in W.P. No.1420 of 2006.

11. The district milk unions have to abide by the transfer agreement on the directions and various Government orders as per Section 6(2) of 1995 Act, but they have violated the same. The directives of the Federation are violated and adequate quantities of milk and milk products are not supplied to the milk products factory, Hyderabad as per the directions of the Federation. The district milk unions are indulging in bulk sale of milk and milk products outside their jurisdiction directly without the knowledge of the Federation and they are not providing any information regarding their

business transactions etc., to the Federation. They are not obtaining quality control clearance from the Federation and are not obeying the directions/instructions of the Government and the Federation. The Visakha and Guntur milk unions floated MATA Federation, marketing milk and milk products of competitor brands utilizing the State owned infrastructure against the interest of the State owned Vijaya brand. The Visakha Milk Union has Visakha brand. The Nalgonda-Rangareddy Milk Union repatriated the services of N. Hanumantha Rao, posted as General Manager by the Federation against the transfer agreement and all the district unions promoted juniors from common category seniority list tampering with protection of service assured by the State Government. The Krishna Milk Union gave higher emoluments to the Chief Executive Officer. All the district unions deviated from the staff pattern promoting and recruiting personnel at their discretion and ignoring the zonal system and the presidential order. The district unions were not remitting the contribution towards pension, leave salary and gratuity. In violation of the disciplinary control vested with the Federation, the Krishna Union did not implement the punishment in respect of Sri P.S.R. Swamy, S.A.O., MPF, Vijayawada, and Nalgonda-Rangareddy Union did not implement the suspension of Sri P. Dayakar Reddy, D.G.M. All the district unions appointed Chief Executive Officers and other sub-staff without the consent of the Federation. Kurnool, Nellore and Visakha Unions appointed retired personnel as their Chief Executive Officers. The final audit reports of Krishna, Guntur, Prakasam, Nellore, Nalgonda-Rangareddy and Kurnool Unions showed serious

financial irregularities and mismanagement.

12. The Andhra Pradesh Legislative Assembly constituted a House Committee on Visakha, Chittoor and Ongole District Unions/Dairies under the Chairmanship of Sri N. Varadarajulu Reddy with 17 M.L.As. of all political parties on 08-02-2005 and in their report, the Committee noted serious irregularities in the working of Visakha and Prakasam Unions. Irregularities in purchase of a second hand continuous butter making machinery from Australia, a second hand milk powder plant from Australia, vehicles, sites at exorbitant prices and cold storage at Autonagar, appointments on contract basis without following the rules including reservation, continuation of retired officers, award of transport contracts on nomination and irregularities in constituting a Trust, were noticed in respect of Visakha Union. Irregularities in appointments made on contract basis, heavy sale proceeds due from sales agents and loss incurred in spoilage of milk were noted in respect of Prakasam Union. After a detailed study on the functioning of two out of eight district unions registered under 1995 Act, the House Committee recommended that 1995 Act has detrimental and adverse consequences and effects on the dairy co-operatives, such as break down of 3-tier structure modeled on Anand pattern, reduction in brand value of Vijaya brand, conflicting marketing strategies, weakening financial position of some district milk unions, denial of fair procurement price to farmers, absence of market intervention mechanism, absence of any returns on assets to the State Government or Federation and break down of common cadre of employees. The House Committee,

therefore, recommended that all the Co-operative dairies be exempted from 1995 Act and to restore the 3-tier dairy structure. The House Committee also noted that in Karnataka and Madhya Pradesh also, there was no absolute freedom of conversion. The State Government constituted a group of Ministers Committee by G.O. Ms. No.211, dated 23-08-2004 and it considered the recommendations of the House Committee and accepted to exclude the dairy co-operatives from 1995 Act to restore the
3-tier structure.

13. The Government policy has always been to develop dairying in the State through Anand pattern 3-tier structure with a common co-operative State owned Vijaya brand. The Government organized the societies and provided various forms of assistance to make dairy an important subsidiary activity of the farmers. Since last 5 years, there is continuous draught in the State and consequent crop failures and dearth of cattle feed leading to large number of farmers' suicides and death of milch cattle. The Government took up on top priority various plans to augment agriculture and allied activities. So far, no dairy co-operative society returned Government share capital, loans, guarantees and assets and dairy farmers are facing several problems under such institutions. It is, hence, felt necessary to retain the 3-tier set up under the Andhra Pradesh Co-operative Societies Act, 1964 to ensure autonomy and greater accountability. Expansion of coverage of milk procurement in villages, increase in co-operative turnover from the present Rs.850.00 crores to the level of other States like Tamilnadu (Rs.1100.00 crores),

Karnataka (Rs.1500.00 crores) and Gujarat (Rs.3000.00 crores), arresting the negative growth in turnover of co-operatives from 13.91% in 1998-99 to 5.18% in 2004-05, provision of effective price support mechanism, ensuring optimum utilization of dairy infrastructure, providing effective product mix in tune with market demand to arrest the decline in turnover of Vijaya products from Rs.95.00 crores in 2001-02 to Rs.62.00 crores in 2004-05, provision of market intervention mechanism to ensure minimum support price to farmers, discharging social obligation by operating in unviable remote areas and bridging the gap between supply and demand during seasonal fluctuations, are the objectives in adopting the 3-tier structure. Accordingly, the diary co-operative societies have been excluded from 1995 Act and brought under 1964 Act. The change in regulatory environment will not take over the district unions or their autonomy, but only ensures greater accountability and use of Government assets for the benefit of small and marginal farmers. When the State Government was in contemplation to bring these amendments, the Visakha District Union got itself incorporated as a producer company though it has no interstate character being confined to three districts in the State. No co-operative society under either Act can be converted as a producer company. The Chairman of Visakha District Union who informed the general body of the union on 27-09-2005 that action to register the union as producer company will be taken after the final judgment of the High Court, got illegally registered the union as a company. The Government, hence, felt the urgency to promulgate Ordinance to amend

the provisions of 1995 Act to arrest such mala fide action and clandestine tendencies and to protect the public properties worth several crores from going into the hands of private parties.

14. The exclusion of the milk/dairy co-operatives from the purview of 1995 Act after a review and in the light of the recommendations of the House Committee only restores the 3-tier Anand pattern. The subject 'co-operation' is in State List and the State Government is within its powers in promulgating the Ordinance. Any right to choose the governing legislation is not a fundamental right and in all the States the

    co-operatives are functioning under 3-tier structure as a result of White Revolution. But the time tested successful 3-tier model broke down in Andhra Pradesh due to certain shortcomings in 1995 Act and misapplication of their provisions by certain dairy co-operatives.

15. On the promulgation of the Ordinance, the existing elected managing committees under 1995 Act stood invalid and incompatible for continuation under 1964 Act. The 1995 Act provides for election of 1/5th of members of the Board every year with a term of 5 years, while the 1964 Act provides for the election of the committees at one time for 5 years. The strength of the Committee is 15 under 1995 Act and 9 under 1964 Act. There is no reservation for women in 1995 Act unlike 1964 Act. The president is elected every year under 1995 Act, while he is elected for 5 years under 1964 Act. The disqualifications prescribed for membership of the committees are different under two Acts. Hence, appointment of persons incharge is a natural corollary to

avoid dichotomy of managing committees under 1995 Act being in place for societies under 1964 Act. The present incumbents can always recontest for the elected office. The persons incharge were appointed only for a limited period of six months or further orders whichever is earlier and the State Government intends to conduct elections afresh under 1964 Act at the earliest after disposal of the writ petitions.

16. W.P. No.2214 of 2006 – Nalgonda-Rangareddy Milk Union:

(a) The findings and report of the House Committee are meant for the legislature and cannot be adjudicatory material in a Court of law. The same cannot be called in question by the writ petitioner or before the Court. The alleged better functioning of Visakha Union cannot affect the policy decision of the State or the legislative action of general application. As on 31-03-2005, only three district unions had some net profit, while five district unions were in loss.

(b) Substantial State investment and entire infrastructure were provided by the State, and funds were provided through centrally sponsored schemes such as women dairy, integrated dairy development projects, etc.

(c) The Ordinance is justified in giving retrospective operation from 01-06-1995 to have uniform application of law since inception.

(d) One-fifth of the directors retire every year and the date of expiry of term of each set of directors will be different. The tenure of the body, hence, will not continue up to 2008.

(e) The body elected under 1995 Act shall cease to exist being not compatible with 1964 Act.

(f) Several irregularities/defects pointed out by auditors in 2003-04 include false bills to a tune of Rs.4,70,266/-. The management was directed to take action for recovery of the misappropriated amount. The district union entered into an arrangement for packing milk and milk products on competitor brands utilizing the State owned infrastructure against the interests of Vijaya brand in spite of specific instructions from the Government.

(g) Nalgonda-Rangareddy district union supplied ghee to Chittoor milk union for sale to Tirumala Tirupathi Devastanams and the sale proceeds could not be paid, as Chittoor milk union was ordered for liquidation. The Federation got exemption of sales tax for the supply of ghee and out of Rs.2.00 crores given as advance to Chittoor milk union for clearing producer bills, the Federation and Krishna, Visakha and Nalgonda-Rangareddy Unions shared Rs.50.00 lakhs each. These transactions were with the approval of the Board of the Federation.

17. Guntur Milk Union:

(a) There was no transfer of surplus staff from the Federation to Guntur union, which, in fact, retained services of personnel of its choice and transferred the leftover staff as surplus to the Federation. The properties belong to the State

Government.

(b) The question is one of State policy in the larger interests of milk producers for protection of State owned properties and infrastructure and not of freedom to the members of the society. The exclusion of the dairy sector from 1995 Act to benefit the milk producers is reasonable for achieving the objectives and there was no violation of Article 14 of the Constitution.

(c) The Vigilance Department seized records from Sangam dairy (of Guntur Union) relating to the transactions of M/s. Rajesh Dairy, Daman involving tax evasion of Rs.1.20 crores.

(d) Out of 12,500 milk collection centers, 6,300 are unregistered milk producer associations and 6,200 are registered bodies, out of which 3,240 are governed by 1964 Act and 2,960 are governed by 1995 Act.

18. Krishna Milk Union:

The transfer agreement was violated in respect of business and service matters and the Government investment and assistance are enjoyed by the Krishna Union. There are Government employees working in the Union against whom statutory dues of Rs.52.78 lakhs are pending towards pension contribution. There was no transfer of surplus staff from the Federation.

19. Karimnagar, Kurnool and Visakha Milk Unions:

Karimnagar and Kurnool unions raised similar

questions and Visakha union enjoying Government investment and services of employees has outstanding dues to a tune of Rs.8.82 lakhs towards gratuity and pension contribution. Section 117 of 1964 Act applies only to resistance or prevention from taking charge and has no relevance. (The averments in the counter-affidavit relating to the events leading to and after conversion of Visakha Union into a producer company are not extracted, as W.P. No.2264 of 2006 involving these questions is not part of this batch).

20. Prakasam Milk Union:

(a) Though the memorandum of understanding entered into by Prakasam Milk Union with the Federation with effect from 15-10-2002 elapsed, the District Union did not respond for extension of the memorandum of understanding as per the transfer agreement and 1995 Act. Such failure makes the conditional registration of Prakasam Union ab initio invalid.

(b) Prakasam Union entered into a management agreement with a competitor brand on 22-10-2005 to take effect on 01-12-2005 to damage Vijaya brand marketing network.

(c) The Union is enjoying Government investment and assistance and is due to a tune of Rs.28.85 lakhs towards gratuity and pension contribution.

21. Nellore Milk Union:

This union is also enjoying Government investment in the form of assets and assistance through various

programmes. It has statutory dues of Rs.26.27 lakhs towards gratuity and pension contribution.

22. Primary Societies:

If the District Unions have to function successfully under 1964 Act, the Primary Societies have to be necessarily restored under that Act. The primary societies cannot seek any separate treatment or continuance of elected body under 1995 Act, as the general bodies of the District Unions consist of representatives/delegates of primary societies.

23. The District Unions in possession of the assets built with Government funds, guarantees and assistance are working in total disregard of the Government policies, in violation of their agreements with the State Federation, and have committed financial and other irregularities. Andhra Pradesh is the only State not following the 3-tier Anand pattern for dairy development now and some milk unions are sending milk outside the State also without coordinating with the Federation or packing milk for competitor brands. The Federation is forced to procure milk from neighbouring State for Hyderabad supplies. Retired employees appointed were not removed in spite of directions. Common cadre of employees was not followed. General Managers appointed by the Federation were not allowed to work. Irregular engagement of labour was done in some Unions. An official enquiry found financial and other irregularities in Guntur milk union. Some district unions appointed retired persons as Managing Directors and General Managers as Managing Directors against the orders of the Managing Director of the Federation and contrary to the interim orders of the High

Court.

24. The State Government is entitled to classify the farmers depending on their avocation, and bring them into a specific fold of legislation. The milk producers form a class by themselves and the co-operative societies functioning under 3-tier structure are a separate distinct class. The Government making policy can take welfare measures to protect the interests of an identified segment of farmers to ensure their upliftment. The welfare measures in respect of other farmers may not be applicable to milk producers or vice versa.

25. The object sought to be achieved by the classification is that infrastructure created by the State at a huge cost to the State exchequer does not go into private hands and the State will give a protective coverage to the farmers by maintaining the functioning of the societies to help the farmers whenever required.

26. Keeping in view the milk producers and larger public interest is not colourable exercise of power. The societies will not lose their autonomy by change of statutory environment except being subject to more regulatory control of the State. The policy adopted by the Government is applicable universally to all societies and does not discriminate any society.

27. The right to form an association is unaffected, as the societies are allowed to exist with wider perspective and representative capacity.

28. The competence and power of the legislature to make retrospective legislation enables the legislature to restore the law as it existed and no vested right of the unions or

their members is taken away.

29. The allegation that with the change of the Government in May, 2004 efforts are made to control the District Unions to have access to their funds, is untenable and objectionable, as it is a uniform policy decision applicable to all societies.

30. The present milk procurement price paid by the Federation is on par with the District Unions and mostly close to the price offered by the District Unions. The milk procurement price is seasonal and based on local conditions. Restoration of 3-tier structure would facilitate higher milk procurement price to the dairy farmers.

31. Krishna Milk Union sent signed copy of memorandum of understanding with substantial variation from the draft sent by the Federation, through its letter dated 30-10-2001, which was not acceptable to the Federation. In a subsequent meeting on 19-11-2001 Krishna Milk Union was asked to serve the memorandum of understanding as per discussions, after which it did not take any steps.

32. The Feeder Balancing Dairy at Sangamjagarlamudi with handling capacity of 1.50 lakh litres per day at an estimated cost of Rs.168.00 lakhs was established in 1973 prior to the formation of the Corporation. The Government released Rs.10.00 lakhs in 1972-73 and earmarked Rs.50.00 lakhs under the 5th plan budget and took Rs.117.00 lakhs on 70% loan and 30% grant basis from Indian Dairy Corporation. The work was entrusted to the National Dairy Development Board for execution at a fee of 5% of total project cost. The State Government provided Rs.57.50 lakhs towards share capital for the Feeder Balancing Dairy and provided further funds from plan budget under various schemes for milk

chilling center, Guruzala at Rs.2.50 lakhs and staff quarters for Sangamjagarlamudi at Rs.23.50 lakhs. The Corporation purchased 14.42 acres at Vadlamudi at a cost of Rs.1.06 lakhs and set up a Feed Mixing Plant of 100 tonnes capacity at a cost of Rs.75.00 lakhs with the assistance of 70% loan and 30% grant from Indian Dairy Corporation. Rs.18.00 lakhs were provided for organizing Milk Producers Co-operative Societies and a Milk Union and Rs.70.00 lakhs for providing technical inputs. The Corporation gave Rs.15.00 lakhs to the Union towards working capital loan with interest at 13.5 per cent per annum in September, 1978, which was recovered from the Union out of the sale proceeds. Thus, the entire assets of the Dairy and Plant were built with Government funds and were given to Guntur Milk Union for management only. The payment of Rs.81.00 lakhs into Treasury on

11-12-1996 on its own by Guntur Union without any demand from the State Government has no consequence on the conditions of transfer of management. There was no assessment of the value of shares or interest payable. The amounts of Rs.40,53,636/- and Rs.49,51,307/- paid by Guntur Union on 05-02-1997 were paid subsequent to registration of the Union under 1995 Act contrary to the statutory stipulation and obligation to repay as on the date of registration. The claim of absolute ownership due to payments is, thus, baseless.

33. The District Unions converted themselves into 1995 Act without return of Government funds, due to which the registration certificates were revised by the Registrar making the registrations subject to fulfillment of the

statutory conditions. The Ordinance only reintroduced the pre-existing management and control under 1964 Act. The Constitution does not confer any fundamental rights on institutions or societies. No mala fides can be attributed to a legislative act. All societies having Government participation are under 1964 Act only and the State applied its mind to all the relevant factors from different angles before issuing the Ordinance. When the societies were excluded from 1995 Act, the deeming provision cannot mean that the managing committees will continue.

REJOINDERS / REPLIES:

1. Nalgonda-Rangareddy District Milk Union:

   (a) Under Operation Flood-II Programme, the State Government and the Federation entered into an agreement/letter of understanding with National Dairy Development Board which provided, among other things, that the ownership of all assets like processing plant, cattle feed plant, etc., would be transferred to the District Co-operative Milk Producers Union concerned within one year and that the State Government shall provide the co-operative institutions necessary land required for the project and adequate autonomy to the co-operative structure ensuring control by the producer members and development of systems to provide maximum possible share of the consumers to the producer members.

   (b) As per the specific conditions, the assets and infrastructure of the Federation were transferred to the union. While transferring the Mother dairy,

the Federation retained the operational benefits for the past five years while passing on the total liability to the District Union and ignoring huge depreciation. The book value of the transferred assets as on

31-03-2005 is Rs.639.56 lakhs out of which only Rs.2.61 lakhs are of the Federation. The growth and development of the union is the result of assistance and constant financial support of National Dairy Development Board but not the State or the Federation since inception. The assets transferred by the Federation are almost of nil value as on date. While for the assets completely financed by the National Dairy Development Board, the District Union is discharging the loan with interest, the District Union made huge investment over the years totally changing the original physical identity of the infrastructure.

(c) On conversion into 1995 Act the Federation itself informed the District Union that it ceased to be a member of the Federation with effect from 15-01-2003.

(d) The State Government transferred 9 Units to the District Union under G.O. Ms. No.49, dated 11-02-1987 and 4 chilling centers and 5 mini chilling centers were established later with latest technology resulting in high yield and heavy sales.

(e) The Registrar of Milk Co-operative Unions by a letter No.1042/00-P1 dated 11-01-2001 directed

the District Union to take steps for conversion into 1995 Act and the Milk Commissioner/Managing Director also directed to take steps to register the societies under 1995 Act by a letter dated 15-12-2000. Accordingly, the Union got registered under 1995 Act by the Special Cadre Deputy Registrar through a letter dated 23-01-2003. The Government issued a memo dated 05-02-1985 constituting a Committee to assess the value of the assets transferred. In AIR 2000 AP 76 the High Court held the 1995 Act to not contemplate handing over of assets at the time of conversion and any procedural irregularity in not redelivering any assets cannot affect the validity of the conversion. Thus, the question of handing over assets or entering into a memorandum of understanding does not arise till all the accounts are settled. The Co-operative Tribunal dismissed the original petition, as 1995 Act mentioned about retaining the assets and infrastructure of the Federation and a writ petition against the same is pending. The use of Vijaya brand was stopped in view of the decision in the Board meeting on 29-09-2001.

(f) The memorandum of understanding submitted by the District Union is pending with the Federation. Section 25 of 1995 Act makes the staff accountable to the society only and the transfer agreement in respect of service matters has no application after conversion. The transfer

agreement even in respect of business matters has no application on conversion. In fact, in W.P. No.452 of 2003 filed by the Marketing Manager of Krishna Union, the Federation submitted that the writ petitioner was not an employee of the Federation.

(g) There were no financial irregularities or mismanagement and there were no false bills in 2003-04. In an isolated case in 1995-96, C.C. No.1009 of 1996 and O.S. No.156 of 1999 were filed by the District Union against the defrauding contractor as per the directions of the Federation. The cases ended in favour of the District Union and execution proceedings are in progress.

(h) The difference in term or number of members of the Managing Committees under the two Acts cannot be a ground to promulgate an Ordinance nor is the rule of reservation for women relevant.

(i) The District Union brought down the accumulated loss of Rs.8.98 crores to Rs.1.00 crore by the end of March, 2005. There are cash profits since 1999.

2. Krishna District Milk Union:

(a) Milk is not a monopoly product of the Government and without maintenance and assistance by the farmer, the organizations and projects would not have naturally developed. The Government has to take up projects in public interest and for public benefit and the growth and fruits cannot be estates and properties of the Government. Almost all the co-

operative societies formed under 1964 Act are on the brink of liquidation due to the intervention of the bureaucracy.

(b) Operation Flood-I Programme is not that of and not funded by the State Government. If other societies are working well with the so-called 2-tier system, it is not known as to how it does not work successfully with milk societies. Processing, packing and marketing are done by District Unions.

(c) The assets were established by the Unions and at the time of conversion into 1995 Act, all the amounts, loans and guarantees of the Government were satisfied. These factors are inconsequential in considering the question of exclusion.

(d) The transfer of assets was made in 1980 two decades earlier to conversion under 1995 Act. Even the Federation was directed to be converted into 1995 Act. The co-operative society itself is the owner of all the properties in its possession, conducting its activities and business itself but not as agent or employee or manager.

(e) Whenever Vijaya brand name is used, consortium is paid to the Federation and Krishna Union paid Rs.12.00 crores from 1985-86 to 2004-05 and nearly Rs.5.00 crores even after conversion into 1995 Act. Though the District Unions did not need the brand name, the Federation is insisting for its use to get substantial amounts. The use of brand name has nothing to do with the registration of the societies and the unions do not have any Government investments.

(f) Krishna Union sent a memorandum of understanding duly signed to the Federation on 31-10-2001, which is kept pending. The burden of surplus staff was borne by Krishna Union including payment of retirement benefits and voluntary retirement compensation to a tune of several crorers. Gratuity and pension were given to them and the Unions were forced to have the Federation employees. The value of assets transferred was nil as per book balance and this issue has to await the decision in W.P. No.25062 of 2000. Being vexed, Krishna Union filed O.P. No.33 of 2005 before the

Co-operative Tribunal to determine the issue of estates including plant and machinery and the same is pending.

(g) Registration of Krishna Union under 1995 Act is not conditional and cannot be later made conditional. The National Dairy Development Board released the State Government from its liabilities under the guarantee, and the Government and the National Dairy Development Board themselves encouraged the conversion.

(h) All the societies including the Unions are prospering very well after conversion and the Government wants to revert back only to take away the profitable amount accumulated after two decades of hard and honest work. The Registrar was not authorized to issue show cause notice leading the Unions to file writ petitions, in which the High Court suspended the Registrar's proceedings. The interpretation of the

business matters and service matters in the transfer agreement and the provisions of 1995 Act is incorrect.

(i) The sale proceeds from Allahabad Doodh Dairy were realized and the purchase advances were completely accounted for. The balance amounts are in the process of recovery and there are no financial irregularities. Even now the general body or the Tribunal can enquire into any irregularities.

(j) The motivated report of the House Committee with politically loyal members about three Unions was intended to liquidate the societies and if the yearly growth has come down, the Government will not be anxious to get the losing societies. The producers are paid a higher price than paid by the Federation and the employees are very happy with the working of the societies.

(k) The Rajya Sabha system was adopted and reservations were omitted in 1995 Act to avoid vacuum and separation.

(l) Several Committees like Subrahmanyam Committee appointed by the authorities themselves clearly stated that there is no value for the transferred items and the book value is nil. The existing liabilities and unwanted surplus staff were also transferred to the Unions. Rs.17.61 lakhs were paid to pension contribution up to 31-03-2005 and the pension contribution for 2005-2006 was resolved to be paid directly to the Government and there are no dues. Rs.60,66,129/- and Rs.298.36 lakhs were due from

the Federation under various heads and the amount was proposed to be adjusted towards the so-called claim of value of assets of the Government.

(m) 532 Primary societies were registered under 1995 Act, which need not necessarily depend on the District Unions. It is not true that the 3-tier system is followed except in Andhra Pradesh.

(n) Vijaya brand exists only at Bombay and Delhi and not the remaining cities and the Federation miserably failed in marketing Vijaya brand products forcing the loss to be absorbed by the milk unions. The Federation has no meaningful market plan resulting in the Unions like Chittoor, Godavari and Proddutur under the Federation control being closed down.

(o) Krishna Union is paying highest procurement price of Rs.195/- per kg. fat to the farmers compared to the low procurement price of the Federation under 1964 Act.

(p) The Federation has no effective procurement and manufacturing programme due to which the Unions prepare such plans to have meaningful activities for survival and growth.

(q) Krishna Union has increased its business to Rs.140.00 crores per annum, entered export market and was awarded ISO 9001, ISO 14000 and HACCP by various organizations for effective management. Either the Government or the Federation never got such quality certificates.

(r) The Union audit completed up to 31-03-2005 by the Government departmental auditors was issued 'A'

class audit certificates for the last ten years, while the Federation audit completed up to 2000-01 was issued 'B' class audit certificate.

(s) Since handing over of the management on 08-02-1985, Krishna Milk Union improved the assets and infrastructure with an asset base of Rs.14.00 crores as on date. The members manage their assets on the feeling of owning.

(t) The Federation paid prices below the market price and delayed payments from 2 to 4 months causing huge financial loss to the Union and hence, the Union is making bulk sales after receiving the value of the product at market price, which is more beneficial to the Union and the farmer. A consortium of 3% is paid to the Federation on such bulk sales.

(u) The pension trust/Federation demanded payment of pension contribution at 41% against the Government pension rules and there was misappropriation to a tune of Rs.30.00 lakhs in the pension trust by issuing bearer cheques. The gratuity contributions were paid by Krishna Union up to 31-07-2005 and the Federation failed in collecting and crediting the gratuity contributions of the employees for the period they worked with the Government or Corporation or Federation. Hence, the Union was forced to open a new gratuity account to fulfill the statutory obligations.

(v) The Federation clearly informed by a letter dated 20-12-1988 about the administrative and disciplinary control of the respective Unions over their staff. The

Federation informed the High Court in several writ petitions that it is no way concerned with the staff and officers working with the Unions. The Unions have a right to appoint their Chief Executive Officers and if the profit earning organizations are merged with the Federation with a loss of Rs.30.00 crores as on 2005 with no audit, they will also collapse. The Federation did not supply any software after collecting Rs.2,50,000/- from Krishna Milk Union. Three employees involved in misappropriation of Rs.150.00 lakhs in 1999-2000 at Mahabubnagar Milk Shed were not subjected to any action. The officers of the Federation misappropriated Rs.40.00 lakhs paid to advertisers without following the procedures, which is the subject of an enquiry. The General Managers— Finance and Marketing, are being continued in spite of several irregularities.

3. Karimnagar District Milk Union:

(a) The diary industry in the State was developed with UNICEF funds and the funds under DPAP schemes, ITDA schemes, SFDA schemes, Six Point Formula funds and State Plan schemes. The Central Government provides 75% of the funds under ITDA and DPAP schemes. The funds spent from all the schemes come to Rs.25.77 crores only.

(b) The development of dairy sector since 1980 was under Operation Flood-II Programme and the State Government entered into an agreement with Indian Dairy Corporation dated 08-01-1981 under which the State Government is under an obligation to provide

necessary land and transfer the dairy plants, chilling facilities and other units to co-operative institutions. The State Government cannot make any claim over the assets created out of the amounts provided by the Indian Dairy Corporation from 1982, and the Andhra Pradesh Dairy Development Corporation acted only as a coordinating authority. The District Unions are repaying the loan provided by the Indian Dairy Corporation from the funds generated by them from dairy activities. The registration of the District Unions under the 1964 Act was as per the agreement.

(c) Under Operation Flood-III Project of 1988, the State Government entered into an agreement with NCDC on 21-01-1988 with similar conditions of providing land and transferring ownership of all the assets to elected Boards of Directors of the District Unions. The business and assets of the Unions belong to the Co-operative Societies, and Karimnagar Union was registered under 1964 Act on 13-03-1997. The assets of Rs.87,32,042-75 ps. and liabilities of Rs.3,93,14,700/- (NCDC loan) and Rs.57,64,672/- towards EMD deposits and solvency of contractors were transferred to the Union. Thus, a negative net worth of Rs.3.63 crores was given to the Union and the Union repaid the entire NCDC loan of Rs.3.05 crores with interest by 14-12-2004, which is certified by the Federation. It also repaid Rs.57,64,672/- towards refund to contractors. The Union turned into a profit generating venture and the assets of the

District Union, thus, belong to it. The State Government is duty bound to develop the dairy sector. 95.47% of the Union's assets were created from the funds of the Union only. The State Government has, in fact, to make good Rs.3.63 crores liabilities transferred to the Union.

(d) W.P. No.14636 of 1999 filed by the staff and workers union of the Corporation and others against conversion alleging it to be contrary to Sections 2(d) and 4(e) of 1995 Act, was dismissed as reported in AIR 2000 A.P. 76. The unions were registered under 1995 Act after obtaining no-objection from the Federation.

(e) The State Government which took a policy decision to convert the Federation from 1964 Act to 1995 Act failed to take follow up action for reasons best known to it. There is no provision in 1995 Act to revise the registration certificates once issued. The Government filed W.P. No.1420 of 2006 against the dismissal of the original petition by the Federation against Visakha Union after the Ordinance to give legitimacy to their illegal action.

(f) Karimnagar Union is distributing milk under Vijaya brand only and did not violate the transfer agreement or any directions or instructions. In W.P. No.963 of 2004 filed by the staff and workers union of the Corporation, the Federation filed a counter clearly stating that the District Unions are maintaining their understanding with the Federation and never compromised on the quality of milk, and the terms of

MoU are to be finalized.

(g) Karimnagar Union is supplying adequate quantity of milk and milk products as per the quotas fixed and indents issued by the Federation and supplying surplus milk outside the State only after meeting such demand and furnishing information. The Federation itself suddenly stopped receiving milk and fixed lesser rates compelling the Union to sell milk outside the State. While the Union paid Rs.175/- per kg. fat to the dairy farmers, the Federation paid only Rs.165/- per kg. in 2004-05 causing a loss of Rs.46,86,749-50 ps. to the Union. Similarly in 2006 February, the Union paid Rs.185/- per kg. fat to the farmers, while the Federation paid only Rs.175/- causing a loss of Rs.1,18,565-52 ps. The Union paid franchisee charges to the Federation for using Vijaya brand. The Union did not make any fresh recruitment except appointment of persons on contract basis temporarily to meet the increased work load.

(h) How the Government orders for recruitment into Government service are applicable to the appointments in co-operative societies is not specified. There are no allegations of financial irregularities, mismanagement and malfeasance against Karimnagar Union.

(i) The District Unions and Primary Societies did not have any share capital or loan from the Government and the dairy farmers have no problems. Karimnagar Union made substantial progress since conversion and Kadapa, Chittoor and Rajahmundry continuing

under 1964 Act incurred enormous losses. The Federation continuing under 1964 Act also is continuously incurring losses. The 3-tier structure was not brought into existence under 1995 Act solely due to the Government not converting the Federation into that Act. How any exclusion from 1995 Act will bring any change was not stated, while issuing the Ordinance solely to supersede the managing bodies. The recommendations of the House Committee were without an opportunity to the concerned Unions to give a reply and the report in respect of a few societies cannot be the basis of a decision with respect to 6,000 dairy co-operative societies. The impugned Ordinance is a colourable exercise of power without any public interest and is mala fide.

(j) The Government cannot change the status of the Unions and Societies by an Act in violation of Articles 14 and 19(1)(c) of the Constitution.

(k) If the societies are deemed to be registered under 1964 Act, the elected bodies of the Unions and societies shall also be deemed to be continued under 1964 Act by virtue of the deeming clause. While 1995 Act is a progressive legislation, it is not stated how the functioning of the existing governing bodies impedes the functioning of the societies under 1964 Act. The official persons incharge busy with their routine office work, have no knowledge or initiative to run the milk dairies. The Ordinance is aimed to strike at the gross root democratic institutions to subserve the interests of the party in power and the

persons incharge can never be a valid substitute for the elected representatives.

(l) Karimnagar Union is having a profit of Rs.12,31,770-22 ps. as on 31-03-2005 as per the audit report and the amount of Rs.0-84 lakhs shown as loss in the counter is due to increase of procurement price paid to the farmers. The Union earned a profit of Rs.1,01,16,113/- for the year 2005-06 up to 31-01-2006. The Union apart from paying higher purchase price to farmers, is giving loans for purchase of milch animals to a tune of Rs.135.00 lakhs every year. It is paying Rs.3,000/- to Rs.4,000/- to the farmers on death of milch animals. It is also paying Rs.75/- as subsidy out of Rs.150/- as premium per person for Janasree Bhima Yojana of the Central Government. The Union paid its subsidy to 20,000 dairy farmers in 2005-06. It paid Rs.35.63 lakhs as subsidy for purchase of veterinary medicines and vaccines. It is arranging check up of milch animals by veterinary doctors appointed by the Union at the doorsteps of the farmers. It stood guarantee for Rs.296.06 lakhs for bank loans for purchase of milch animals by farmers in 2005-06 like in other years. The Karimnagar Union established ten artificial insemination centers for buffalos.

(m) The terms of the memorandum of understanding are at the stage of discussions, for which the Unions are not responsible and no Union assets are appropriated for private gains.

4. Kurnool District Milk Union:

(a) Under the agreements dated 08-01-1981 and 21-01-1988 with the Indian Dairy Corporation under Operation Flood – II and III Programmes, the State Government is obliged to transfer the dairy plants and chilling facilities and other units to the Co-operative institutions and to provide the land. The Government undertook to transfer the ownership of all the assets to district unions with elected Boards of Directors. The total amount spent on dairy development under various schemes was only Rs.25.77 crores as against Rs.59.74 crores provided by the Indian Dairy Corporation in 1982 alone. The Corporation acted only as a coordinating authority. The State Government or the Corporation cannot claim any ownership over the dairy infrastructure created out of the funds provided by the Indian Dairy Corporation which loans are being repaid by the district unions. The business and assets of the unions belong to the co-operative societies.

(b) The assets and liabilities as per the audit report for 1990-91 of the Kurnool District Milk Producers Co-operative Union are Rs.3,11,89,725-65 ps. and Rs.4,18,42,515-15 ps. respectively. As on the date of transfer i.e. 01-04-1990, the negative net worth was Rs.1,06,54,790/-. The State Government which transferred the liability, cannot claim any assets of the Government to be in the hands of the union. The union turned the negative growth into a profit generating venture and paid the loan taken from the National Dairy Development Board. The Federation

borrowed Rs.565.00 lakhs in 1981 for construction of the powder plant at Nandyal and to expand the dairy at Kurnool, which was transferred to the district union which is repaying the loan. 96.10% of the Union's assets were created from out of the funds of the union only.

(c) Kurnool Union is distributing milk under Vijaya brand only and did not violate any directions or instructions of the Government or Federation. Kurnool Union is strictly adhering to the procurement schedule of milk and milk products, standards, etc. as per the directions of the Federation and supplying adequate quantity of milk and milk products every month as per the quotas fixed and indents issued by the Federation. It is supplying only surplus milk outside the State after meeting the demand of the Federation.

(d) The only irregularity alleged against the Union is that the sale proceeds are not realized in 2003-04 and 2004-05. The amounts were remitted a day after the closing day of the year in the running account and all the outstanding amounts were realized as certified by the auditor. Kurnool Union made enormous progress after conversion into 1995 Act. There are no allegations of misappropriation or malfeasance against the governing body.

(e) The accumulated losses of Kurnool Union as on 31-03-2002 before conversion were Rs.300.00 lakhs. The union paid Rs.298.16 lakhs to the National Dairy Development Board towards the loan leaving a balance of Rs.13,69,000/- payable by 2010. The

amount of Rs.0.79 lakhs shown as accumulated losses in the counter as on 31-03-2005 was one reduced from Rs.300.00 lakhs within three years and after deduction of the accumulated losses, the net profit earned by the Union as on 28-02-2006 is Rs.24.87 lakhs.

(f) Kurnool Union raised the purchase price from Rs.150/- per kg. fat to Rs.185/- and is also giving loans to dairy farmers for purchase of milch animals to a tune of Rs.3.00 crores every year. It is also bearing 50% of the animal insurance premium besides giving Rs.3,000/- per acre as subsidy for fodder development. Veterinary medicines are supplied to the farmers at 50% cost. The union is arranging regular check up of milch animals by the veterinary doctors appointed by the union at the doorsteps of the farmers. The union is standing guarantee for repayment of bank loans for purchase of milch animals by farmers to a tune of Rs.12.00 crores per annum.

5. Nellore District Milk Union:

(a) The claim that the classification made through the impugned Ordinance seeking to remove the milk/dairy co-operative societies from the purview of 1995 Act is arbitrary, irrational and discriminatory, was not answered. How the dairy/milk co-operative societies are different from various other co-operative societies under 1995 Act, was not stated. The conversion into 1995 Act was done at the encouragement and behest of the State Government.

How excluding the milk societies from 1995 Act restores Anand pattern, was not explained. While the legislative competence on the subject of 'Co-operation' is not questioned, even if the democratically elected bodies were removed, it would not be necessary to appoint officials as persons incharge and the democratically elected Chair-persons of the Unions can be permitted to continue as persons incharge to manage the unions.

(b) Nellore Union is regularly repaying the loans to the National Dairy Development Board as per its schedule and only minimum balances are owed to the Government. Contribution to the Corporation cannot imply contribution to the Union, and Nellore Union was not sanctioned any amounts under the Ford Foundation, Netherlands Assisted Project, Health Project Schemes, etc. The union played a major contributory role in creating physical infrastructure and developing co-operative network throughout the district.

(c) Nellore Union independently constructed bulk cooling centers at Doravarisatram, Nellorepalem, Adurupalli and Seetharamapuram at a total cost of Rs.175.00 lakhs. Regarding non-realisation of sale proceeds, erring individual was dismissed from service and prosecuted. The purchase advances of the year 2002-03 were adjusted in the accounts of the next year. Out of the loss due to spoilage milk, the producers had borne the loss of 8,261 litres and the transporters had borne the loss of 1,376 litres, while

the Union had borne only the loss of 635 litres.

(d) The union is paying a higher procurement price to milk producers to withstand competition from private dairies, while the Federation is paying lesser purchase price resulting in accumulation of losses. The Federation also reduced the operation cost paid by it from

Rs.2.45 ps. per litre in 1999 to Rs.2/- per litre from 2001 in spite of escalating operational expenditure due to revised pay scales and enhanced dearness allowance for employees and higher electricity, fuel and transport charges and wages, etc. In spite of the unrelenting efforts of the management, there were a few lapses of the Union for which it should not be penalized. Between 1999 and 2004, the union remitted Rs.1,20,43,084/- towards gratuity and pension contribution, while the authorities released only Rs.1,07,99,662/-. Rs.8,94,550/- are due to some employees who retired in 2005 and Rs.3,48,872/- are still lying with the Federation. Retired personnel are employed on a very insignificant scale keeping in view the economy measures to keep the union financially fit.

6. Prakasam District Milk Union:

(a) The Government cannot rationalize its constitutional violations by citing administrative and financial inadequacies, if any, of the unions. The audit objections with respect to purchase advances for

2002-2003 were complied with and the balance outstanding will be adjusted in due course. The

losses due to souring of milk happened due to handling of milk over and above the plant capacity and mechanical break down, and the union suspended the Incharge Milk Manager, Milk Chilling Center, Kanigiri. The loss due to leakage of milk is only 0.46%, which is within the permitted norms. A large extent of the dues from sales were recovered from milk commission agents and Rs.27,18,985-75 ps. were not due to the Federation as alleged. Legal proceedings were initiated against the commission agents and distributor for recovery. Such operational problems are handled by the management with requisite professional skill. The union played a major contributory role in creating the physical infrastructure and developing co-operative network throughout the district.

(b) No appointments were made on contract basis by the union. Retired Assistant Veterinary Surgeons are employed on assignment basis on consolidated remuneration as per the permission given by the Government. Six time scale worker posts were filled up with women extension supervisors of the erstwhile Netherlands Assisted Projects as per the orders of the High Court in C.C. No.2088 of 1998 in W.P. No.1279 of 1995.

(c) Prakasam Union entered into a memorandum of understanding with the Federation on 19-12-2003 for a period of three years from 15-10-2002. Only on the expiration of the said memorandum of understanding, Prakasam Union entered into an agreement with

National Dairy Development Board for a period of 7 years on 22-10-2005 with effect from 01-12-2005. The Managing Director of the Federation himself corresponded with the National Dairy Development Board even on 18-07-2000 regarding handing over the management of Prakasam Union to National Dairy Development Board. Prakasam Union also entered into an agreement with the Federation on 05-10-2005 for the surplus milk and milk products. The union is making business transactions exclusively with the Federation adhering to the conditionalities in the agreement. The agreement with National Dairy Development Board was entered into to repay the outstanding loans amounting to Rs.48.03 crores and under the agreement the total liability of the union would be waived off on completion of the stipulated period of seven years. The joint venture with National Dairy Development Board will strengthen the existing infrastructure technically and financially.

(d) Rs.1,11,38,034/- accrued to the Federation from Prakasam union between 2000 and 2005 towards gratuity and pension contributions and the Union did not default in its statutory liabilities. The losses are largely arising out of lower purchase price and lesser operation cost paid by the Federation, while the Union was constrained to pay milk purchase price on par with private dairies. There were delays in payments by the Federation amounting to hundreds of lakhs between 1999 and 2005 resulting in heavy borrowings by the union from commercial banks

leading to interest burden and losses.

7. Guntur District Milk Union:

(a) The Guntur Union was established on 23-02-1977 and the milk producing farmers themselves contributed for purchase of land, construction of buildings, purchase of vehicles and for other infrastructure and installation facilities with no contribution or investment by the Government or the Federation. The entire share capital was completely paid to the Government. There was no such thing as management transfer or handing over of Sangam unit on 01-08-1978. The Guntur Union was registered much earlier, while the Federation was registered on 01-10-1981. At the time of conversion into 1995 Act, all the amounts payable to the Government were paid, loans were discharged and guarantees were lifted, only after which registration was made.

(b) The donation of Ac.10-00 of land to the trust through a general body meeting when the Union was under 1964 Act, was only to promote and implement the objects and purposes of the union itself. The sale proceeds are being recovered from Krishna Veni Foods through legal proceedings. The cheque bouncing cases in C.C. Nos.46 and 47 of 2001 and 1 to 6 of 2002 are pending before VI Additional Munsif Magistrate's Court, Guntur. On acquittal in some criminal cases, appeals were preferred in Criminal Appeal Nos.2190 to 2195, 2197 and 2198 of 2003 which are pending before the High Court. In the company case in C.P. No.201 of 2002, the Madras

High Court directed Krishna Veni Foods Private Limited not to alienate or sell its assets. The civil suit for recovery of the amount in O.S. No.95 of 2005 is pending before the District Judge, Guntur. Tankers of different capacities will be utilized depending on the requirement. A Marketing Executive was appointed believing the alleged loss of qualification certificate and when the certificate was not produced, later he was terminated and a case of cheating was filed. The so-called irregularities in the audit cannot be a ground for the amendment of the Act.

(c) There are no State owned properties with Guntur union. There was no tax evasion in respect of the transport of M/s. Rajesh Dairy, Daman. The final assessment of 1998-99 and 1999-2000 was completed and the tax demand of Rs.19,89,813/- but not Rs.1.2 crores was paid under protest. Appeal Nos.1001 and 1002 of 2002 against the same are pending before the Sales Tax Appellate Tribunal. The Federation/Government itself is due Rs.1,11,47,258/- to the Union.

(d) 437 primary societies and 400 unregistered associations are supplying milk to Guntur Union and they are autonomous. The Guntur Union is paying the highest procurement price of fat to the farmers. The Union entered into export market and got ISO 9001 for effective management. The union audit was completed up to 31-03-2005 by Government departmental auditors and 'A' class audit certificates

were issued for the last 10 years. The Guntur Union was awarded various certificates for maintaining best quality in manufacture of milk products.

8. Co-operative Development Foundation:

(a) No document was filed setting out the main features of Anand pattern of 3-tier structure. It was not stated as to which provision of the Ordinance provides for adoption of Anand pattern. No provisions of 1964 Act were relied on as providing for such pattern.

(b) The object of the Act appears to be to circumvent and nullify the operation of judicial and quasi-judicial orders in force to which the State is a party and judicial orders cannot be nullified by invoking legislative power.

(c) While the figures given in W.P. No.3275 of 2006 regarding the co-operative societies converted into or registered under 1995 Act were not denied, the break up of 2,960 societies said to be governed by 1995 Act was not given. The professed object of the Act to check wrongful conversion into 1995 Act, does not have any nexus or reasonable nexus with the newly registered societies under 1995 Act without any Government share capital or Government loans or guarantees. Similar are other societies which did not have Government share capital or Government loans or guarantees at the time of their conversion.

(d) The report of the group of Ministers Committee is not disclosed or filed and the House Committee considered only 3 out of 11 district unions.

(e) The 3-tier system did not emanate from any

statutory provisions but from the conditions stipulated by National Dairy Development Board for extending financial assistance to dairy co-operatives. The 1995 Act provides for accountability in case of violation of its provisions. The Ordinance militates against the objects of 1995 Act and the earlier Acts and the co-operative principles. Retrospective cancellation of registration is ex facie arbitrary.

(f) The Ordinance was issued for a collateral and unsustainable purpose of seeking to wrest control of the district milk unions and village milk societies. Assuming that the assets and funds of the Government or the Federation are with the unions, the Government has to take appropriate and necessary contractual steps and legal remedies for their recovery. 1964 Act permits continuance of the persons incharge for 3 years and the Government is seeking to have Government controlled co-operatives in milk and dairy sector.

(g) The milk unions and societies are continuing to run under the same Anand model as the one that was followed earlier and the 3-tier structure was affected in its functioning only due to the Federation failing to discharge its functions harmoniously with the district milk unions. Out of the three district unions continuing under 1964 Act, two are under liquidation and the 3rd is on the verge of liquidation. The Federation also continues under 1964 Act though all its remaining 8 functioning constituent milk unions

and their affiliated societies have converted into mutually aided co-operatives.

(h) The Union Government decided to remove governmental control over the milk/dairy sector. It issued Milk and Milk Products Order in 1992 to regulate trade in milk and milk products in a liberalized market economy. It envisages licencing of dairies having milk processing facility of 10,000 litres and above. The Milk Commissioner is the licencing authority under the order, who is also the Managing Director of the Federation and Registrar of Milk Co-operatives under 1964 Act. As licencing authority, the Milk Commissioner permitted several private corporates and non-corporates to set up dairies in the State who account for half of the market share. The private players remain outside the fold of the Federation and the Government with managerial autonomy and their own brands names. The milk co-operatives with no functional autonomy and controlled by external agencies will not be in a position to compete. The entire dairy/milk co-operative sector will be marginalized due to regressive legal environment under 1964 Act.

(i) In respect of the three unions under 1964 Act which became non-functional, hundreds of village milk societies and milk producers were left in lurch. Lakhs of milk producers in these districts are compelled to sell their milk to the agents of private dairies. In respect of six districts—Anantapur,

Mahabubnagar, Medak, Nizamabad, Warangal and Khammam, where the State Federation is directly procuring milk, there is no development of dairy sector and there is a drastic decline in the quantity of milk procured. The price paid in 12 districts by 8 milk unions under 1995 Act is higher than the price paid by the Federation or the three milk unions under 1964 Act. The 8 milk unions under 1995 Act are healthy with a high growth rate.

(j) Any irregularities or mismanagement can at best lead to initiation of enquiry and action under 1995 Act but not exclusion from the Act. The Co-operative Tribunals under 1995 Act are headed by serving judicial officers not below the rank of District Judge, which can take action. While the allegations are made only against eight district unions, the Ordinance seeks to exclude from the purview of 1995 Act all the milk/dairy

co-operatives. There are currently more than 3,600 milk/dairy co-operatives, several of which came into existence subsequent to 1995 Act.

(k) Cartelisation by private corporates resulted in lower prices to milk producers, higher price for milk consumer and more profit to the private operators. A vibrant,

self-reliant co-operative movement alone offers the best protection to the milk producers and the consumers.

9. Primary Societies of Kurnool District:

(a) The primary societies did not make any complaint

regarding the functioning of Kurnool District Union to the officials. The procurement of milk and payments by the District Union are to the satisfaction of the primary societies. The functioning and coordination between the union and the primary societies are very smooth and successful. The members of the primary societies are getting financial, technical and marketing support from the district union, which is standing guarantee for the loans taken by the dairy farmers for purchase of milch cattle. The State Government is responsible for not bringing into existence the 3-tier structure under 1995 Act due to non-registration of the Federation under that Act.

(b) The primary societies are not in possession of any Government properties or share capital or any loans or assets or guarantees. The reasons for excluding the milk co-operatives from 1995 Act are not applicable to primary societies.

10. Primary Societies of Karimnagar District:

(a) The primary societies did not make any complaint regarding the functioning of Karimnagar District Union to the officials. The procurement of milk and payments are made by the district union to the satisfaction of the primary societies. The procurement price went up from Rs.150/- to Rs.185/- per kg. fat after conversion into 1995 Act. The district union is giving financial, technical and marketing support to the members of the primary societies, standing guarantee for their loans and paying bonus to the members every year out of the

profits.

(b) The primary societies are not in possession of any Government properties or share capital or assets or loans or guarantees. The Ordinance is only for the intended benefit of the members of the party in power. The Government officers cannot be imposed to run the primary societies against the wishes of the members. The Ordinance is neither in the interest of dairy farmers nor dairy sector nor co-operative movement at large.

MATERIAL REFERRED TO BY THE PARTIES:

1. Brahm Perkash Committee Report dated 20-05-1991:

The Planning Commission constituted the Committee to have a quick review of the present status of co-operatives and to formulate a model co-operative law. In the Foreword to the report, it was observed that it was visualized that the co-operative sector was to emerge as a strong balancing sector between the private and the public sectors. Definite policy measures were taken to change the official character of co-operatives, which, inter-alia, included discontinuance of long-standing practice of Government officers occupying ex-officio positions in co-operatives as presidents/ chairmen; prohibiting the Ministers to hold offices in co-operatives, liberalization of co-operative laws; periodical review of the progress made in the direction of democratization of co-operatives, etc. As a consequence of these measures, co-operatives moved faster in the direction of becoming popular peoples institutions. While reviewing the current situation, the report stated that the essence of the

co-operative organization is the principle of democratic

management, signifying institutional regulation by the members and their elected representatives in accordance with the bye-laws. It precludes control and interference by any outside agency including Government, except the usual penal action by the competent statutory authority in proven cases of abuse. The co-operative law has to respect this aspect of co-operative organization. The report noted that however, trends that have developed during the post independence period present an altogether different picture. Faster as has been the growth of co-operative activity through increased governmental aid, stronger and tighter has been the control of the Government over the movement through incorporation of restrictive features in co-operative legislation stultifying co-operative leadership, generating members' apathy and curbing local initiative at grass-root level.

After analyzing the restrictive provisions in force, the report proceeded to consider the draft model Co-operative Societies Act, with an approach to give a genuine character to co-operatives, to minimize Government control and interference to enable co-operators and co-operatives to develop self-reliance and self-confidence with power of decision making and to eliminate politicization. It was stated that the proposed draft law removes the colonial approach and character of existing laws and truly meets the norms of governance of a democratic autonomous enterprise in the country so deeply committed to democratic values.

2. Report of the Study Group on Co-operative Law in Andhra Pradesh:

The Study Group concluded that under 1964 Act,

co-operatives were made subordinate to the Registrar who is subordinate to the Government and as an unintended consequence of the concept of the State partnership, the Registrar transformed into a Controller and Superseder. The Study Group recommended adoption of the model Act with some changes suggested by them. The Study Group was appointed by the Co-operative Development Foundation (petitioner in W.P. No.3275 of 2006) consisting of Sri M. Ramakrishnayya, Former Deputy Governor of Reserve Bank of India and two others. The Study Group observed that any arrangement to protect the interests of the Government for orderly redemption of the existing Government equity should not be such as to endanger the autonomy of the co-operative and it was concluded that the time has come to recognize that the success of co-operation depends on the fundamental freedom to form co-operative associations and to practise co-operative principles unhindered. Co-operatives must flourish as voluntary, democratic and autonomous organizations.

3. Report of the Task Force of the Government of India dated 04-02-2005:

The task force on revival of the rural co-operative credit institutions, traced the evolution of the Indian Co-operative Movement and noted that the movement was initiated by the Government and it spread and diversified with the encouragement and support of the Government and its present condition is also to a great extent because of the intrusive involvement of, and interference by the Government. It also noted that since 1990 there has been an increasing realization of the destructive effects of intrusive State patronage, politicization and the consequent impairment of the role of co-operatives in general, and of credit co-operatives in particular, leading to a quest for reviving and

revitalizing the co-operative movement. It noted various Committees strongly supporting replacement of the existing laws with the proposed model law and that the passage of 1995 Act by the Andhra Pradesh Government marked a significant step towards reform. The report noted that following the example of Andhra Pradesh, eight other States viz. Bihar, Chhattisgarh, Jammu and Kashmir, Jharkhand, Karnataka, Madhya Pradesh, Orissa and Uttaranchal have passed similar legislation to govern and regulate mutually aided co-operatives. The report observed that in all cases these new laws provide for co-operatives to be democratic, self-reliant and member-centric, without any State involvement or financial support. They provide for co-operatives registered under the old law to migrate to the new Act. The old Acts were not repealed, nor was there any serious effort to encourage and facilitate the conversion of old co-operatives to come within the purview of the new Act. Most existing co-operatives, therefore, continued to adhere to the old law. It also noted that the new law, however, did lead to the emergence of a "new generation autonomous financial co-operatives", albeit slowly and unevenly across the country and that while the number of co-operatives registered under the new liberal Act is slowly picking up, the conversion from the old law to the new Act has largely been in the arena of commodity co-operatives.

4. Information from the Internet-based Dairy Information System for 2003-04 on District-wise milk production and marketable milk surplus per day showed that the organized milk marketing sector is able to procure only 21 lakh litres out of 132 lakh litres of marketable surplus and that within the organized sector, eight milk unions under 1995 Act were collecting 10.10 lakh litres, private corporates 9.70 lak litres and the Federation

with six district units and three milk unions under 1964 Act only 1.45 lakh litres. The average price paid to milk producers between 1996-97 and 2005-06 by 8 unions under 1995 Act and the Federation indicated that the price paid by the Federation was less than the price paid by the 8 unions. Out of 11 district unions at the time of enactment of 1995 Act, three unions remained under 1964 Act (Chittoor, Kadapa and Godavari) and 8 converted into 1995 Act. Chittoor and Kadapa are under liquidation. Godavari is stated to be on the verge of liquidation. The milk marketed and the business turnover progressively increased in respect of the 8 unions under 1995 Act and progressively decreased in respect of the 3 unions under 1964 Act.

5. Anand Pattern:

The Anand pattern is an integrated co-operative structure that procures, processes and markets the produce. Supported by professional management, producers decide their own business policies, adopt modern production, marketing techniques and receive services that they can individually neither afford nor manage. The institutional infrastructure – village co-operative, dairy and cattle feed plants, state and national marketing – is owned and controlled by farmers. Professionals are accountable to leaders elected by producers. The village societies are formed by milk producers and each society has a milk collection center. The district union is owned by dairy co-operative societies. It processes and markets fluid milk and products. It provides a range of inputs and services to the members of the village societies regarding feed, veterinary care, artificial insemination, training, consulting services, etc. The State Federation is responsible for marketing the fluid milk and products.

6 . The statistics furnished by the State Government

regarding financial performance, milk procurement and sales and purchase price broadly indicate progressive increase in procurement, sales and purchase price in respect of the 8 unions under 1995 Act in general. The financial performance as per co-operative audit report in respect of these 8 unions seeks to paint the picture as not rosy, while the statistics presented to the Court by the respective district unions seek to project their performance in positive light.

7. House Committee Report:

Pursuant to the discussion on Chittoor and Visakha dairies on the floor of the House during question-hour, the Minister for Animal Husbandry agreed for a probe on Visakha, Chittoor and Ongole Dairies by a House Committee, which was accordingly constituted with Sri N. Varadarajulu Reddy as Chairman and eight other M.L.As. as Members. The terms of reference include enquiry into irregularities in purchase of machinery, equipment, land, vehicles, construction of buildings, appointments made on contract basis, misuse of funds, transport contracts pertaining to Visakha, Chittoor and Ongole Dairies; creation of Trust with Rs.20.00 crores by the Chairman, Visakha Dairy; reasons for losses of the co-operative dairies and irregularities in purchase of HTST Plant by Ongole Dairy and suggestion of remedial measures for effective functioning of the dairies in the State. The report presented to the House on

15-12-2005 contained the information collected and proceedings held by the Committee during the course of its hearings and ultimately the Committee concluded that private dairies like Heritage Dairy are flourishing at the cost of Government dairy and small/marginal farmers in Chittoor. The Committee recommended to reopen the closed Chittoor dairy and to pay the wages to 140

employees.

The Committee also observed that Visakha Dairy affairs have become more like a private affair treating it as a private estate and it desired evolution of proper mechanism to ensure regular check and control over the co-operative dairies. It observed several irregularities and corrupt practices in Visakha dairy and recommended to award of transport contracts through a transparent tender system, constitution of a representative committee to oversee the payments towards cattle insurance claims, milk purchasing price, ex-gratia to workers, etc., action against officials and non-officials responsible for purchasing unnecessary and unwanted machinery, a joint account system, prohibition of employment of retired persons, observance of rule of reservation in all appointments, rescinding the contract with Smt. Allu Bhanumathi regarding a godown, delinking of the Trust from the dairy, deletion of offending bye-laws and an enquiry by the Vigilance Enforcement Cell into all these aspects.

Concerning Ongole Dairy, the Committee recommended a review of the man power against the work load while noting that better steps should have been taken in respect of spoilage of milk, purchase of HTST plant, etc. It noted functioning of 41 private dairies in the district to be affecting Ongole dairy and recommended to constitute an expert committee to suggest measures for revitalization of the Ongole dairy on the verge of closure.

The Committee noted that in no other neighbouring State, such an Act like 1995 Act is applicable in the dairy sector. Karnataka and Madhya Pradesh have enacted similar Acts but the dairy sector is allowed to continue to function under the old Act and 3-tier system. Tamil Nadu, Kerala, Orissa and West Bengal

have not enacted any Act like 1995 Act. In all the surrounding States, dairy activities are being undertaken under 3-tier structure and milk and milk products are being marketed on single brand name.

The general recommendations of the Committee expressed a strong opinion that 1995 Act has detrimental and adverse consequences and effects on the dairy co-operatives and it strongly recommended that all the co-operative dairies be exempted from the purview of 1995 Act in order to strengthen the dairy co-operatives and for overall development of dairy industry in the State by restoring the 3-tier dairy structure, which was in existence prior to coming into force of 1995 Act.

A dissent note was submitted by two legislators stating about the specific conditions agreed by the State Government in 1981 and 1988 under Operation Flood-II and III to transfer the assets to

co-operative institutions and to give liberty to the co-operative institutions in service matters. The Government was stated to have motivated and encouraged the village societies and district unions to convert into 1995 Act and the three unions which remained under 1964 Act are stated to be under liquidation or near liquidation. The dissent note stated that 1995 Act has nothing to do with a situation, which remained unrectified for 25 years. It also referred to the non-conversion of the Federation into 1995 Act and the losses of the Federation being passed on to the unions. The dissent note projected 8 unions under 1995 Act as better performers and the Federation and the unions under it to be poor performers and it opined that the attempt to revert the dairy co-operatives from 1995 Act to 1964 Act is to exercise control over the co-operatives to destabilize the autonomy and growth of co-

operatives enjoyed under 1995 Act. It also enclosed a note in Telugu answering the allegations made against the Visakha dairy.

8. A copy of letter from **Dr. V. Kurien, Chairman, National Co-operative Dairy Federation of India Limited** dated 21-10-2005 was filed in W.P. Nos.2294 and 2295 of 2006, wherein Sri Kurien noted that eight years ago it was Andhra Pradesh to be the first State in the country to have come out with such a progressive co-operative legislation to provide an opportunity to the co-operatives of the State to register under the new Act to be able to function as truly autonomous and democratic people's institutions and that they all then took pride for these developments. Sri Kurien also regretted that now, at a time when the whole world is moving towards more and more liberalization and adopting policies of increasing deregulation and decontrol of State institutions, the Government of Andhra Pradesh is considering to revert to the old Act which would really be a huge backward step. He requested the Government of Andhra Pradesh not to take such retrogressive step that has potential to permanently disable the fast-growing dairy co-operatives of the State and in his view, disabling district unions registered under the new Act cannot be the solution for the problems dairy co-operatives are facing in the State.

ARGUMENTS:

Sri P.P. Rao, learned senior counsel appearing for the petitioners has argued that the impugned amendments are inconsistent with and contrary to the objects and reasons and the scheme of 1995 Act and the national policy of liberalization/privatization. He has drawn the attention of the Court to the judgments of the Supreme Court in R.K. Dalmia v. Justice Tendulkar reported in AIR 1958 SC 538 at Paras 11, Indravadan H.

Shah v. State of Gujarat reported in 1986 (Supp) SCC 254 at paras 13 to 15,Harbilas Rai Bansal v. State of Punjab reported in (1996) 1 SCC 1. at Paras.9 to 18. Learned senior Counsel has also advanced the following arguments,

1. The amendments seek to undo the events and transactions of past 10 years and wipe out accrued rights which can not be permitted as per the judgment of Apex Court in State of Gujarat v. Ramanlal Keshavlal Soni as reported in (1983) 2 SCC 33 Prs.50 to 52.

2. 1995 Act and 1964 Act make no distinction between dairy co-operative societies and other co-operatives. The co-operative principles are applicable to all co-operative societies alike. The reasons given in support of the impugned amendment do not apply to the dairy co-operative societies formed and registered after 1995 Act. Lack of classification violates Article 14. In support of this contention he has relied on K.T. Moopil Nair v. State of Kerala which is reported in AIR 1961 SC 552, Pr.8.

3. The impugned provisions have no nexus with the object of enforcing the 3-tier system as both the 1964 and 1995 Acts permit registration of Federations. The 1964 Act does not contain any express provision providing for 3-tier structure. A provision for 3-tier structure can be made in 1995 Act itself and even 1964 Act does not treat dairy co-operatives as a separate class.

4. Curtailment of the terms of duly elected management committees is violative of Article 14. Learned Senior Counsel has referred an authority of Supreme Court in D.S.

Reddy v. Chancellor, Osmania University as reported in AIR 1967 SC 1305 Prs.32 to 35, 40 to 48.

5. The dairy co-operative societies are deprived of the benefit of the basic principles of cooperation stated in Section 3 of 1995 Act. 1995 Act provides for barest minimum State regulation, while 1964 Act provides for extensive State control and regulation inconsistent with the present national policy adopted by the State of Andhra Pradesh as reflected in the scheme of 1995 Act based on the model law recommended by the Planning Commission. The outdated amendments obstruct and frustrate the object of development and growth of vibrant co-operative societies. Unaided private institutions are entitled to autonomy and freedom from State control or regulation except to a limited extent to safeguard public interest. In support of his preposition he has cited authority of Supreme Court in TMA PAI Foundation v. State of Karnataka as reported in (2002) 8 SCC 481 and P.A. Inamdar v. State of Maharashtra as reported in (2005) 6 SCC 537.

6. The impugned amendments and the reasons therefor to the extent they seek to regulate business in milk and milk products carried on by dairy co-operative societies trench upon the field occupied by the Essential Commodities Act, 1955 and the Milk and Milk Products Order, 1992 falling within the scope of Entry 33 of List III and consequently outside the Entries 27 and 32 of List II of Schedule VII of the Constitution.

7. The recommendations of the House Committee and the group of ministers are not based on adequate relevant

material, as there was no investigation of all the co-operative societies either converted or registered under 1995 Act. The House Committee looked into Visakha and Ongole Unions converted under 1995 Act and Chittoor under 1964 Act under liquidation. The House Committee did not consider the functioning of 3599 societies newly formed and registered under 1995 Act. The House Committee did not recommend retrospective conversion of the societies from 1995 Act into 1964 Act. The impugned provisions are, hence, arbitrary and ultravires under Article 14. In order to substantiate this contention he has cited following authorities

1) State of A.P. v. P. Sagar – AIR 1968 SC 1379.
2) T. Muralidhar Rao v. State of A.P. – 2004 (6) ALD 1 (L.B).
3) B. Archana Reddy v. State of A.P. – 2005 (6) ALD 582 (L.B).
4) Indra Sahwney v. Union of India – (2000) 1 SCC 168.

8. The effect of the impugned provisions is to nullify the judicial orders passed in pending proceedings initiated by District Unions on being aggrieved by the show cause notices proposing to cancel their registration and they are hence, colourable legislation as by Apex Court in P U C L v. Union of India which is reported in (2003) 4 SCC 399.

9. The provisions of 1964 Act providing for extensive State control are incompatible with the co-operative principles enunciated by the International Co-operative Alliance and endorsed by the United Nations and the International Labour Organisation and adopted by the Planning Commission and the Central Government. The impugned amendments are,

hence, arbitrary and violative of Article 14.

10. The amendments violate the fundamental right of the members of the societies under Article 19 (1) (c) of the Constitution and are not saved by Clause (4) thereof. They also violate the right to carry on business conferred by Article 19 (1) (g) and not saved by clause (6) thereof.

Sri S. Ramachandra Rao, learned senior counsel has submitted following arguments:

1. The impugned provisions are clear instances of hostile discrimination and class legislation, whereby only milk and dairy cooperative societies are taken out of the field of the modern cooperative principles of democracy and self-sufficiency and are placed under the State control and management, thereby violating the constitutional protection of Article 14 by an arbitrary legislative action. For this preposition learned Senior Counsel has relied on following judgments of Supreme Courts,
    1) D.S. Nakara v. Union of India – (1983) 1 SCC 305: AIR 1983 SC 130.
    2) Express Newspaper Ltd. v. Union of India – AIR 1958 SC 578.
    3) State of Maharashtra v. Manubhai Pragaji Vashi – (1995) 5 SCC 730
    4) Venkateshwara Theatre v. State of A.P. – (1993) 3 SCC 677.
    5) Mohan Kumar Singhania v. Union of India – 1992 Supp (1) SCC 594.
    6) Riaz Ahmed v. Competent Authority – AIR 1994 J.K. 51.
    7) Javed v. State of Haryana – (2003) 8 SCC 369.
    8) State of A.P. v. Nallamilli Rami Reddi – (2001) 7 SCC 708.
    9) Hamdard Dawakhana v. Union of India – AIR 1960

SC 554.

10) State of Bombay v. F.N. Balsara – AIR 1951 SC 318:1951 SCR 682.
11) E.P. Royappa v. State of T.N. – (1974) 4 SCC 3: AIR 1974 SC 555 .
12) Ajay Hasia v. Khalid Mujib Sehravardi – (1981) 1 SCC 722 : AIR 1981 SC 487.

2. By removing the milk and dairy cooperative societies only from the protection of beneficial, democratic 1995 Act, which is in tune with the current principles of cooperation i.e., free from State aid and control and placing them under the compulsory and deemed membership of 1964 Act, the State has violated Article 19 (1) (c) of the Constitution. Learned Senior Counsel has relied on following authorities,

1) Damyanti Naranga v. Union of India – 1971(1) SCC 678 : AIR 1971 SC 966.
2) M. Sitharamachary v. The Senior deputy Inspector of Schools – AIR 1958 AP 78.
3) L.N.M. Institute of Economic Development and Social Change v. State of Bihar – (1988) 2 SCC 433.
4) Chintaman Rao v. State of Madhya Pradesh – AIR 1951 SC 118 : 1950 SCR 759.
5) Hari Chand Sarda v. Mizo District council – AIR 1967 SC 829.
6) Mohd. Faruk v. State of M.P. – (1969) 1 SCC 853 : AIR 1970 SC 93.
7) Dwaraka Prasad Laxmi Narain v. State of Uttar Pradesh – AIR 1954 SC 224.
8) K.R. Lakshman v. Karnataka Electricity Board – (2001) 1 SCC 442.
9) O.K. Ghosh v. E.X. Joseph – AIR 1963 SC 812.
10) Delhi Transport Corpn. V. D.T.C. Mazdoor Congress – 1991 Supp (1) SCC 600 : AIR 1991 SC 101.

3. These impugned provisions are unsustainable in law as it is in breach of earlier commitments of the State as undertaken by the Government of India to IDC, World

Bank, EEC and International Development Association as the doctrine of Promissory Estoppel operates in the field of legislation also as held by the Supreme Court in 2006 (1) Decisions Today (SC) 352.

4. The actual accrued benefits under valid earlier law cannot be taken away by the legal fiction of retrospective operation of the impugned provisions as the same is beyond the legislative power as held by the Supreme Court. He has cited following rulings of Supreme Court,

1) State of Gujarat v. Raman Lal Keshv Lal Soni – (1983) 2 SCC 33.
2) Chairman, Rly. Board v. C.R. Rangadhamaiah – (1997) 6 SCC 623.
3) T.R. Kapur v. State of Haryana – 1986 Supp SCC 584.
4) State of T.N. v. Arooran Sugars Ltd. – (1997) 1 SCC 326.
5) Union of India v. Tushar Ranjan Mohanty – (1994) 5 SCC 450.
6) S.S. Bola v. B.D. Sardana – (1997) 8 SCC 522.

5. Placing the milk and dairy cooperative societies under 1964 Act by taking them out of the 1995 Act is nothing but putting the clock back and is meant for achieving full and total governmental and State control and management and is attaining virtual usurpation of their assets and the same is incompatible with the present day voluntary democratic cooperative principles i.e., free from State aid and control, hence the impugned provisions are contrary to the main purposes of both the Acts.

6. Section 19 of 1964 Act prescribes eligibility for membership and the same is subject to Section 21. In respect of membership, 1964 Act, which is a self-contained

code and as per Section 21 (1) (aa), any one who cannot be a member under Section 19 (1), cannot be a member. With these provisions of 1964 Act in full force by amending another Act, i.e. 1995 Act no membership can be granted by a deeming provision under another Act since the same runs counter to the explicit provisions of 1964 Act.

7. This is a colourable legislation and as such is constitutionally unsustainable:

(a) As the Act suffers from malice in law as it is aimed at destabilizing the term of elected people belonging to opposition parties compulsorily depriving the membership of 1995 Act and coercively placing them under 1964 Act, is in violation of Constitution and only a single class are taken out with more than 13,000 societies of various kinds are not effected;

(b) as it is aimed at scuttling and nullifying the judicial process and decisions. Learned senior counsel has relied on,

1) In the matter of: Cauvery Waters Disputes Tribunal 1993 Suppl. 1 SCC 96 (II).

2) S.R. Bhagwat & Others v. State of Mysore – (1995) 6 SCC 16.

3) Indian Aluminium Co. & others v. State of Kerala & others – (1996) 7 SCC 637.

4) Dr. DC Wadhwa & others v. State of Bihar & others – (1987) 1 SCC 379.

(c) to bureaucratize and bring it under the

State control and

(d) for breaching of all cooperative norms and hence it does not come within the scope of Entry 32 of the State list and

(e) the reasons given in the Bill as its objects and reasons that 'weakened financial position of some District Unions', 'denial of the fair procurement price to farmers' and 'absence of market intervention mechanism' are demonstrably false;

(f) for relying upon the partisan House Committee which recommended this switch over based on irrelevant and insufficient data;

(g) for further claiming that farmers are having problems and the risk of assets in the private hands;

(h) for issuing the impugned Act with a view to bring them within the mischief of Section 32 (7) of 1964 Act and to run thousands of District and Primary Milk and Dairy Societies through Government officials being the real purpose and to bring them within the sweep of Section 131 and the Primary elected bodies also to be replaced by officials;

(i) the reasons given for urgency in the ordinance are irrelevant and irrational (Counter Page 41). Learned consel has relied on the preposition laid down in the

following judgements,

1) Gurudeva Dutta VKSSS Maryadit & others
v. State of Maharashtra – (2001) 4 SCC 534.

2) Dr. DC Wadhwa & others v. State of Bihar & others – (1987) 1 SCC 379.

(j) It is a legislation with vindictive purpose to be achieved indirectly what could not be done directly is constitutionally defective and breaches it.

(k) Acting on political, partisan and collateral considerations basing upon the partisan House Committee report to hit at progressive, profit-making and economically viable, productive, modern cooperative units functioning democratically is nothing but an act of legislative despotism and the same cannot be sustained in Constitution as it is vitiated by malice in law.

(l) The reasons given for enacting and the reasons for urgency are not sound but are nothing but expression of legislative excesses.

(m) The legislative effort to do away with elected tenure of thousands of milk and dairy cooperative unions is capricious, whimsical and unsustainable in law for this preposition he has cited following authorities,

1) Express Publications (Madurai) Ltd. v.

Union of India – (2004) 11 SCC 526.

2) State of A.P. v. Goverdhanlal Pitti – (2003)
4 SCC 739 : AIR 2003 SC 1941.

3) Gullapalli Nageswara Rao v. A.P.S.R.T.C.
– AIR 1959 SC 308.

8. Scuttling and nullifying the judicial process and decision, which militates against constitutional parameters:

(a) the Federation seeks dissolution of these societies under Section 40 of 1995 Act, a cooperative Tribunal dismissed the same and W.P. No.1420 of 2006 is pending.

(b) This Court suspended the move of the Government to convert the Societies from 1995 Act to 1964 Act. Writs are pending against such action. (Counter Pg.54 and 55), W.P. No.23543 of 2004, dt.21-12-2004 filed by Vizag Society. Other Unions filed W.P. Nos.23429, 23680, 23848, 23907, 24079 of 2004 and interim orders are to the effect that action should be taken.

(c) Enquiry against the Vizag Society – (A Tulasi Dass – irregularities show cause notice
dt.15-3-2005 – enquiry stayed by this Court in W.P. No.8677 of 2005 on 21-4-2005.

(d) Government itself filed writ petition against conversion of Vizag Society into Company – W.P. No.2749 of 2006 is pending and no interim orders are issued.

Sri D. Prakash Reddy, learned senior Counsel has argued that the impugned legislation violates Article 14 of the Constitution by introducing an unfair discrimination between a homogenous class of co-operative societies. The class legislation did not state or demonstrate any difference between the dairy cooperatives and other societies or reason for denying the freedom and liberty to choose either Act, to the dairy societies alone.

He has further submitted that the statement of objects and reasons for the legislation did not explain how 1995 Act is responsible for break down of the 3-tier structure. Sections 2 and 9 of 1995 Act show that 1995 Act also contemplates a 3-tier structure. He has also contended that 1995 Act is a self-contained code with adequate provisions in Sections 27 to 40 for requisite mechanism for control, supervision and dissolution of the societies/unions, which operate in violation of the provisions of the Act. The irregularities/short-comings are common to all other societies also.

Sri G. Mohan Rao Advocate has argued that there is no violation of Section 2 (d) and Section 4 (3) (e) of 1995 Act in the conversion of the unions from 1964 Act to 1995 Act, there is no impediment or legal obstacle for bringing into existence the 3-tier structure on Anand pattern under 1995 Act, the classification is not based on intelligible criteria having nexus with the object, without any amendment to 1964 Act, societies registered under 1995 Act cannot be deemed to be registered under 1964 Act and the reasons and justification given for exclusion of milk cooperative societies from 1995 Act are not applicable to 3000 and odd primary milk cooperative societies registered under 1995 Act only.

Learned counsel for petitioners in other writ petitions more or less raised the same contentions.

Sri B.V. Subbaiah, learned counsel for Guntur Union further stressed on the fact that Guntur District Union had no properties or shares or loans belonging to the Government and the entire loan to the National Dairy Development Board was repaid.

Learned Advocate General has made following submissions:

1. Commencing with the Integrated Milk Project in 1969, the Government spent huge sums in developing the dairy infrastructure. The Government invested Rs.9,263.25 lakhs and continues to invest in dairy sector. The total value of civil and mechanical assets of the Government as on February, 2006 is Rs.47,963.52 lakhs. Further assets were developed by the dairies from the business proceeds derived from the infrastructure set up by the Government.
2. The transfer agreements with the district unions are only for management and not for transfer of assets.
3. Three-tier structure is required to increase procurement coverage in the organized sector and to discharge the social obligation of the Co-operatives and the State and to arrest the decline in the annual growth in turnover of dairy cooperatives. Three-tier structure provides efficient price support mechanism, coordination of dairy activities, regulation of milk sale price in the market, and development of infrastructure. All other States are functioning under 3-tier structure only.
4. The estimated present value of assets with the district unions is more than Rs.1000 crores and the assets built

with Government funds cannot be left to be appropriated by some individuals.

5. Visakha Dairy got registered as a company and transferred the assets to the new company. Unless immediate action is taken, assets built with public funds would go into private hands, if other unions also act similarly.

6. Conflicting marketing strategies adopted by district unions have to be avoided and financial and other irregularities have to be curbed.

7. The autonomy of the district unions is not affected by the amendments but only accountability is ensured.

8. 1995 Act did not provide for 3-tier structure while 1964 Act provides for the same.

9. The dairy/milk societies form a separate distinct class with the National Dairy Development Board distinctly dealing with dairy activities and the milk producers having the specific avocation. The policy decision cannot be criticized as colourable.

10. The right to form association is no way affected or curtailed. Only the regulatory environment is changed. Other States also excluded certain societies from mutually aided cooperative societies.

11. Retrospective effect is given to protect the valuable assets and restore 3-tier structure. The legislature is competent to amend the law with retrospective effect and no vested rights of the members of the societies are taken away. The appointment of persons incharge is a natural corollary to avoid vacuum.

12. The legislation is in tune with directive principle under

Article 48 of the Constitution of India,

13. The agreements between the Federation and District Unions are violated. Learned Advocate General has relied on following judgments of Apex Court in support of his contentions raised,

1) The State of Madras v. V.G. Row – AIR 1952 SC 196

2) Dharamdutt and others v. The Union of India and others –

(2004) 1 SCC 712

3) Sakhawant Ali v. State of Orissa – AIR 1955 SC 166.

4) Mohd. Hanif Quareshi and others v. State of Bihar – AIR 1958 SC 731

5) State of Gujarat and another v. Ramanlal Keshav Lal Soni

and others – (1983) 2 SCC 33.

6) State of Tamil Nadu v. Arooran Sugars Ltd., – (1997) 1 SCC 326 .

7) Virender Singh Hooda and others v. State of Haryana and another – (2004) 12 SCC 588.

Sri S. Satyanarayana Prasad, learned counsel for Federation has argued that,

1. The ownership of the business and of the assets of the district milk unions and primary societies vests with the Federation, which is fully owned by the Government and all the activities carried out by the district unions are on behalf of the Federation but not as independent private units.

2. The district unions or other primary societies under the control and management of the Federation are not eligible for registration under 1995 Act without returning the Government's share capital and assistance and entering into a memorandum of understanding with the Government regarding loans and guarantees.

3. There is no vested right to be continued to be governed by

a particular enactment and the Government took a policy decision to change the control and management of the State owned entities. There cannot be any fundamental right to manage the affairs of the society in a particular manner.

4. The milk/dairy societies are distinguishable from other societies as the Government involvement and participation is large since the beginning with involvement of Government funds and assets unlike the other societies. Learned Counsel has cited following judgments of Supreme Court in support of his contentions,

1) All India Bank Employees Association v. National Industrial Tribunal, Bombay – AIR 1962 SC 171. Prs.18 to 20.
2) Board of Trustees Ayurvedic and Unani Tibia College, Delhi v. State of Delhi – AIR 1962 SC 458. Prs.19 to 25, 45, 46 and 48.
3) The Tata Engineering & Locomotive Ltd. v. State of Bihar – AIR 1965 SC 40. Pr.28.
4) S. Nageswara Rao v. Government of Andhra Pradesh – AIR 1978 AP 121. Prs. 25 to 30 and 40.
5) Lalit Narayan Mishra Institute of Economic Development and Social Change v. State of Bihar – AIR 1988 SC 1136. Prs.16, 18, 24, 25 and 32.
6) Prafulla Kumar Das and others v. State of Orissa and others – (2003) 11 SCC 614. Pr.45.
7) Dharam Dutt v. Union of India – AIR 2004 SC 1295. Prs.16 t0 49.
8) Ali M.K. & others v. State of Kerala & others – (2003) 11 SCC 632 Prs.13 to 16.
9) Balco Employees Union (Regd) Vs. Union of India – (2002) 2 SCC 333. Prs.32, 33, 34, 42, 46, 47, 51 & 87.
10) The Commissioner of Income Tax, Madras v. The express Newspapers Pvt. Ltd. – AIR 1965 SC 33. Pr.7.
11) Commissioner of Sales Tax, Gujarat v. Union Medical Agency – AIR 1981 SC 1 Prs.3, 8 and 24.

12) Karnataka State Road Transport Corporation, Bangalore v. B.A. Jayaram and others – 1984 (Suppl.) SCC 244. Prs.16 and 17.
13) Apollo Tyres Ltd. v. Commissioner of Income Tax, Kochin – (2002) 9 SCC 1. Pr.13.

Sri K.G. Kannabhiran, learned senior counsel for Intervenor has submitted his arguments stating that Part-IV of the Constitution is opposed to liberalization and cooperation is opposite to competition, The report of the study group on cooperative law in Andhra Pradesh itself referred to the study group being fully conscious of the controversies raising in regard to manufacture of sugar and milk products showing sugar and milk products to be a separate class by themselves. Milk is a separate subject dealt with by the National Dairy Development Board Act. Multipurpose Co-operative Societies Act also indicates the same. He has further argued that 1964 Act was never challenged at any time and even the statement of objects and reasons of 1995 Act show that 1964 Act is still relevant and The directive principles under Articles 39 and 48 have to be kept in view. He has cited following judgments of Supreme Court in support of his arguments,

1) State of A.P. and others v. Mcdowell & Co., and others – (1996) 3 SCC 709.
2) Ashutosh Gupta v. State of Rajasthan and others – (2002)
4 SCC 34
3) Gurudevdatta VKSS Maryadit and others v. State of Maharashtra and others – (2001) 4 SCC 534.

REASONED FINDINGS:

The parameters of judicial review are well settled and as held in **T. Muralidhar Rao v. State of Andhra Pradesh and others**[1], judicial review is concerned with the validity rather than

merits; with the reasoning process rather than correctness of the decision that has been reached and the Court refrains itself to enter into the merits of any policy decision and does not undertake to judicial review such policy decision unless the policies so formulated are unconstitutional. If the policies formulated are inconsistent with the laws or arbitrary or irrational or came into existence due to abuse of power, they are liable to be struck down. It is also well settled that it is neither within the domain of the Courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved as observed in **BALCO Employees Union (Regd) v. Union of India and others**[2], wherein it was also pointed out that in matters relating to economic issues, the Government has, while taking a decision, right to trial and error as long as both trial and error are bona fide and within limits of authority.

In **State of A.P. and others v. Mcdowell and Co., and others**[3], it was pointed out that Parliament and Legislatures composed of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them and the Court cannot sit in judgment over their wisdom. There is always a presumption in favour of the constitutionality of enactment and as laid down in **Ashutosh Gupta v. State of Rajasthan and others**[4] this presumption stems from the wide power of classification which the legislature must, of necessity, possess in making laws operating differently as regards different groups of persons in order to give effect to policies. It was held that it must be presumed that the legislature understands and correctly appreciates the need of its own people.

A harmonious interpretation has to be placed upon the Constitution to mean that the State should certainly implement the directive principles, but it must do so in such a way that its laws do not take away or abridge the fundamental rights as held in **Mohd. Hanif Quareshi and others v. State of Bihar**[5] and **Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others**[6]. In order to sustain the presumption of constitutionality, the Court may take into consideration matters of common knowledge and the history of the times and assume every state of facts, which can be conceived of as existing at the time of legislation, as stated by the Supreme Court in **Hamdard Dawakhana v. Union of India and others**[7]. The Supreme Court pointed out that in order to ascertain its true nature and character, it is legitimate to take into consideration all the factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress, the remedy for the disease which the legislature resolved to cure and the true reason for the remedy. These basic tenets governing the examination of constitutionality and legality of legislation have to be kept in mind in assessing the impugned Ordinance/Act.

Legislative Competence:

The competence of the State Legislature to enact the Ordinance/Act was not questioned except in W.P. No.3275 of 2006, wherein the impugned amendments and the reasons therefor are contended to trench upon the field occupied by the Essential Commodities Act, 1955 and the Milk and Milk Products Order, 1992, falling within the scope of Entry 33 of List III and consequently outside the Entries 27 and 32 of the List II of

Schedule VII of the Constitution. Entry 33 of List III of Schedule VII of the Constitution covers trade and commerce and production, supply and distribution of products, food stuffs, cattle fodder, raw cotton and raw jute as enumerated therein and Entry 27 in List II of Schedule VII covers production, supply and distribution of goods subject to the provisions of Entry 33 of List III. Thus, these two Entries cover the production, supply and distribution of goods and the exclusive power of the State to legislate under Entry 27 in List II of Schedule VII is, subject to the concurrent power given to the Parliament under Entry 33 of List III in respect of specified goods. Neither of the entries even remotely touches the incorporation, regulation and winding up of Corporations other than those specified in List I or 'Co-operative Societies' specifically covered by Entry 32 of Schedule VII. None of the provisions of 1995 Act or 1964 Act are claimed to encroach upon the field occupied by the Essential Commodities Act, 1955 or the statutory orders made there under. Statutory exclusion of the dairy/milk co-operative societies from 1995 Act and statutory conversion of the dairy/milk co-operative societies from 1995 Act into 1964 Act cannot, in any manner, be construed as legislating upon the production, supply and distribution of goods covered by Entry 27 of List II or Entry 33 of List III. Even if such co-operative societies are concerned with production, supply and distribution of goods covered by Entry 27 of List II or Entry 33 of List III, any legislation governing their incorporation, regulation and winding up cannot, by any means of reasoning, be construed as affecting the trade and commerce in or the production, supply and distribution of goods they deal with. Entry 32 of List III was interpreted to comprise provisions for the amalgamation, division and reorganization of co-operative societies. In **H. Puttappa v. State**[8], it was pointed out that the

language of the entry should be given the widest scope of which its meaning is fairly capable of in interpreting an entry in the VII Schedule and if two reasonable views are possible, the one giving widest scope should be preferred. It was further pointed out that each entry should be understood as entitling the Legislature to make provisions for all ancillary and subsidiary matters, which can fairly and reasonably be comprehended in the entry. It was held that the provisions regarding amalgamation, division and reorganization of Co-operative Societies are in the nature of ancillary and incidental provisions, which can be made under the entry 'Co-operative Societies'. It was also noted that a law, which is well within the legislative competence of the State, might however, be bad if it infringes any of the fundamental rights conferred by Part III of the Constitution. The provisions of the Essential Commodities Act, 1955 and Milk Products Order 1992 are no way touched upon or affected by 1995 Act or 1964 Act or the amendments to 1995 Act proposed to be made by the impugned Ordinance/Act. No conflict between the exclusive legislative power of the State under Entry 32 of List II and the concurrent legislative power of the State and the Centre under Entry 27 of List II and Entry 33 of List III can be read where there is none. The impugned Ordinance/Act is, therefore, within the legislative competence of the State Legislature.

This conclusion is in tune with the dictum of the Supreme Court in **The State of Bombay and another v. F.N. Balsara**[9], wherein it was held that it is well settled that the validity of an Act is not affected if it incidentally trenches on matters outside the authorized field and therefore, it is necessary to enquire in each case what is the pith and substance of the Act impugned. If the Act, when so viewed, substantially falls within the powers

expressly conferred upon the legislature which enacted it, then it cannot be held to be invalid, merely because it incidentally encroaches on matters which have been assigned to another legislature.

Classification:

The requirement of the validity of a legislation with reference to Article 14 of the Constitution is that the subject matter of legislation should be a well defined class founded on an intelligible differentia, which distinguishes that subject matter from the others left out and such differentia must have a rational relation with the object sought to be achieved by the legislation as laid down in **Dharamdutt and others v. The Union of India and others**[10]. The concept of equality before law does not involve the idea of absolute equality amongst all, which may be a physical impossibility, said the Supreme Court in **Ashutosh Gupta v. State of Rajasthan and others** (4 supra) and held that all that Article 14 guarantees is similarity of treatment and not identical treatment, while opining that what amount of dissimilarity would make the people disentitled to be treated equally is rather a vexed question. The Supreme Court further pointed out that mere differentiation or inequality of treatment does not, per se, amount to discrimination within the inhibition of the equal protection clause and that when a law is challenged as violative of Article 14, it is necessary at the first instance to ascertain the policy underlying the statute and the object intended to be achieved by it. It also cautioned that the inequality complained of must arise under the same piece of legislation or under the same set of laws, which have to be treated together as one enactment.

In **State of Maharashtra v. Manubhai Pragaji Vashi and**

others[11], it was held that the burden of proof is cast on the State to demonstrate that discrimination is based on a reasonable classification having nexus to the object sought to be achieved. The Supreme Court further pointed out in **Sakhawant Ali v. State of Orissa**[12] that the classification must rest upon some real and substantial distinction bearing a reasonable relation to the things in respect of which the classification is made. As held in **State of A.P. and others v. Nallamilli Rami Reddy and others**[13], if there is equality and uniformity in each group, the law will not become discriminatory, though due to some fortuitous circumstance arising out of peculiar situation, some included in a class get an advantage over others so long as they are not singled out for special treatment. The Supreme Court pointed out that the differentia required in substance is that it must be real and substantial bearing some just and reasonable relation to the object of the legislation. To the same effect is the decision in **Venkateshwara Theatre v. State of A.P. and others**[14]. The concept of equality before law was explained by the Supreme Court in **K.R. Lakshman and others v. Karnataka Electricity Board and others**[15] as meaning that among equals, the law should be equal and should be equally administered and that the likes should be treated alike. The concept of reasonableness and non-arbitrariness pervading the entire constitutional scheme running as golden thread through the whole of the fabric of the Constitution, was emphasised in **Ajay Hasia and others v. Khalid Mujib Sehravardi and others**[16], wherein Article 14 was held to strike at arbitrariness because an action that is arbitrary must necessarily involve negation of equality. In **Javed and others v.**

State of Haryana and others[17] and **Express Publications (Madurai) Ltd., and another v. Union of India and another**[18], it was pointed out that the basis for classification may rest on conditions which may be geographical or according to the objects or occupation or the like. The Court must be satisfied that there is a reasonable basis for classification which appears on the face of the statute itself or is deducible from the surrounding circumstances or matters of common knowledge and in their absence, the law will have to be struck down as an instance of naked discrimination as held in **D.S. Reddi, Vice Chancellor, Osmania University v. Chancellor, Osmania University and others**[19]. It was pointed out in **Indra Sawhney v. Union of India and others**[20] that the legislative declarations of facts are not beyond judicial scrutiny in the constitutional context of Articles 14 and 16. The Court can tear veil to decide the real nature of the statute if the facts and circumstances warrant such a course. If the legislation was merely a pretence and the object was discrimination. The validity of the statute should be examined by the Court notwithstanding the declaration made by the legislature. The Court could certainly examine whether the so-called known facts were indeed non-existent. When neither from the objects and reasons of the Act nor from the provisions of the Act, it was possible to discern any basis for the classification created by the amendment or any nexus with the object sought to be achieved by the Act, the amendment was struck down in **Harbilas Rai Bansal v. State of Punjab and another**[21].

In **E.P. Royappa v. State of Tamil Nadu and another**[22], it was pointed out that Articles 14 and 16 strike at arbitrariness in

State action and ensure fairness and equality of treatment and they require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. The Apex Court observed that where the operative reason for State action, as distinguished from motive inducing from the anti chamber of the mind, is not legitimate and relevant, but is extraneous and outside the area of the permissible considerations, it would amount to mala fide exercise of power and hit by Articles 14 and 16. It also cautioned that the burden of establishing mala fides is very heavy on the person who alleges it and that the allegations of mala fides are more often easily made than proved and the very seriousness of such allegations demands proof of a high order of credibility. Of course, mere hardship cannot be a valid ground for striking down a valid legislation unless it is held to be suffering from the vice of discrimination or unreasonableness as held in **Prafulla Kumardas and others v. State of Orissa and others**[23]. There should be no discrimination between one person and another, if as regards the subject matter of the legislation their position is substantially same as held in **D.S. Nakara and others v. Union of India**[24]. The Supreme Court pointed out that all persons similarly circumstanced shall be treated alike both in privileges conferred and the liabilities imposed and the law can recognize even the degree of evil but the classification should never be arbitrary, artificial or evasive and must have a reasonable relation to the object of the legislation. Similar is the decision in **Mohan Kumar Singhania and others v. Union of India and others**[25] in which it was observed that every classification is likely in some degree

to produce some inequality. **Indravadan H. Shah v. State of Gujarat and another**[26] is against any discrimination or arbitrariness or unreasonableness in matters of services and **Kumnathat Thathunni Moopil Nair etc., v. State of Kerala and another**[27] dealt with a case where the lack of classification created inequality and the Act did not lay down any principle or policy for the guidance of the exercise of discretion by the Government. In **Express Newspapers (Pvt.) Ltd., and another v. the Union of India and others**[28], it was held that both the substantive and procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness that is to say the Court should consider not only factors such as the duration and the extent of the restrictions but also the circumstances under which and the manner in which their imposition has been authorized. In **Shriram Krishna Dalmia v. Sri Justice S.R. Tendolkar and others**[29], it was held that if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as biased, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reason for subjecting certain individuals or corporations to hostile or discriminating legislation.

The Supreme Court in **State of A.P. v. P. Sagar**[30] made it clear that by merely asserting that law was made after full consideration of the relevant evidence and criteria which have a bearing thereon, and was within the exception, the jurisdiction of the Courts to determine whether by making the law a fundamental

right has been infringed is not excluded. The test of the validity of a law alleged to infringe the fundamental rights of a citizen or any act done in execution of that law lies not in the belief of the maker of the law or of the person executing the law, but in the demonstration by evidence and argument before the Courts that the guaranteed right was not infringed.

In **Dr. Riaz Ahmed and others v. Competent Authority and another**[31] basing on the facts it was held that no reasonable nexus with the object for incorporating such a provision was shown and the classification made appears to have not been based upon any reasonable guidelines nor any object is spelt out.

These principles illuminate the path of scrutiny of the impugned Ordinance/Act as to its legal and constitutional validity.

A Mutually Aided Co-operative Society as defined by Section 2(d) of 1995 Act did not exclude any class of such societies from its purview until the impugned Ordinance/Act, sought to introduce the words— “but does not include Milk/Dairy Co-operative Societies”. A proviso is also sought to be added to Sub-section (1) of Section 4 of 1995 Act prohibiting any registration or conversion of any co-operative society as a dairy or milk co-operative society under 1995 Act. How a dairy or milk co-operative society is different and distinct from any other co-operative society is not stated either in the Ordinance or in the Act or the Statement of objects and reasons appended to the Bill. The Statement of objects and reasons while stating the urgent need to exclude dairy/milk co-operative societies from the purview of 1995 Act cited many reasons as prompting the decision but fail to mention any distinction or difference between the dairy/milk co-operative societies and other societies. Both 1995 Act or 1964 Act

make no distinction between dairy/milk co-operative societies and other co-operative societies in any provision until the impugned amendment. Both the statutes are guided by the same co-operative principles. While the 1964 Act provides in Section 18 for classification of the societies with reference to their objects, area of operation, membership or any other matter specified in the Rules, there is no such provision under 1995 Act. The statement of objects and reasons of 1995 Act specifically referred to the National Dairy Development Board among the Co-operative Financing Organisations which are possibly seeking to deal directly with co-operative societies, without necessarily involving the Government. It was also further stated that there are co-operatives, which may have some Government funds but are not depending on such funds or Government assistance or other forms for their survival. It is, therefore, clear that co-operatives having some Government funds with which the National Dairy Development Board has to deal with, were specifically in the mind of Government and the Legislature before bringing them under the umbrella of 1995 Act. The continuance of the provisions of 1964 Act was considered necessary only in respect of the co-operatives, which by their objects or weak nature require the support and intervention of the Government. The Legislature clearly visualized the return of the share capital, any outstanding loans or guarantees and assistance to the Government before registration of a co-operative society originally registered under 1964 Act, into a society under 1995 Act. When the co-operative societies, with which the National Dairy Development Board directly deals with, can only be dairy/milk cooperative societies and when they were advisedly and deliberately brought within the purview of 1995 Act, the intended exclusion of such societies from

the beneficial provisions of that Act now can only be made by assigning valid reasons for such classification.

While most of the persons supplying milk to the dairies are farmers, the dairy activity is a subsidiary activity of these farmers according to the Statement of objects and reasons of the Bill. When other co-operative societies dealing with farming and agricultural activities and are being financed by co-operative financing organizations such as the National Bank for Agriculture and Rural Development and the National Co-operative Development Corporation, as referred to in the Statement of objects and reasons for 1995 Act, continued to have the benefit of both 1964 and 1995 Acts, what sort of legitimate differentiation can be made between milk producing farmers and non-milk producing farmers, is unintelligible. The Statement of objects and reasons for the impugned Bill itself refers to the Government organizing primary agricultural co-operative societies and assisting them in the form of share capital, loan, guarantee, subsidies and infrastructure to improve the agricultural production. Thus, it is clear that dairy/milk co-operative societies stand on the same footing in the matter of receiving such assistance from the Government, which cannot be held as a factor justifying their segregation. Assuming that a co-operative society or its members have no fundamental right to choose the governing legislation, the denial of such choice to the dairy farmers/milk producers and their co-operative societies alone and not others, will be the vitiating factor when any such classification has no explicable or justifying basis. The Ordinance/Act suffers from the vice of being class legislation exhibiting hostile discrimination against dairy farmers and milk producers without any scientific or rational basis for such distinction. Merely because the National Dairy Development

Board distinctly deals with dairy activities, co-operatives dealing with such activities cannot form a separate and distinct class in so far as co-operative activity is concerned. The specific avocation of the milk producers like the respective specific avocations of the members of other co-operative societies cannot be a logical ground for unfavourable differentiation. While the Government involvement and participation in a large measure is equally present in respect of other societies also, as disclosed by the Statement of objects and reasons for 1995 Act and the impugned Bill, any controversies regarding manufacture of sugar and milk products cannot justify the milk producers being treated as a separate class. Sugarcane farmers or sugar producers are not sought to be treated as a distinct class for that reason and the classification of dairy farmers/milk producers and the co-operative societies into a disadvantageous group disentitled to liberal and beneficial provisions of 1995 Act based on accepted co-operative principles, has no rational basis and is unreasonable.

Rule 12 of the Andhra Pradesh Co-operative Societies Rules, 1964 made in exercise of the rule making power under Section 130(1) of 1964 Act, is obviously in pursuance of Section 18 of 1964 Act which enables the Registrar to classify societies in accordance with Rules with reference to their objects, area of operation, membership or any other matter specified in the Rules. Rule 12 discloses that the classification of societies made by it did not deem it necessary to specify dairy/milk co-operative societies as a separate class. Sub-rule (4) of Rule 12 enabled subdivision of any class of societies into categories by the Registrar with reference to the composition of their membership, nature of business transacted by them or the goods handled by them or any other similar manner. It is not claimed that 'dairy/milk co-

operative societies' was the subject of any such subdivision of any class of societies classified under Sub-rule (1) of Rule 12. If really the dairy/milk co-operative societies deserve and need to be separately and distinctly handled, why the 1964 Act or the Rules made thereunder have not so far made any such classification, may also be a pointer to such societies having no such distinguishing features as to justify their segregation and separate treatment.

The House Committee Report acted as a catalyst for the impugned legislative action. The reasons recorded by it for Chittoor dairy going into liquidation have nothing to do with the working of 1995 Act, as Chittoor Union continued to be under 1964 Act. Visakha Union converted into 1995 Act was stated by the Committee itself to have established 27 bulk cooling centers and 7 milk chilling centers. The procurement of milk progressively increased from 473 lakh litres in 1996 to 1232 lakh litres in 2004-05 through milk collection centers, which increased from 1360 to 2503 during the period. The purchase price paid to the producers also registered a corresponding increase and so was the turnover of milk and milk products. The ratio of net profit and gross profit also in general had increased between 1999-2000 and 2004-2005. Irregularities were noted in purchase of a second hand continuous butter making machinery from Australia, a milk powder plant from Australia, 52 bulk cooling units, vehicles, sites and cold storage at Autonagar, appointments made on contract basis, continuation of retired officers, transport contracts and creation and running of a Trust. These irregularities were not stated to be possible only under 1995 Act and not under 1964 Act. The statutory regulatory environment alone being the cause for the irregularities is, thus, not specified or probablised. Unlike other unions, Prakasam union

entered into a memorandum of understanding with the Federation for three years from 15-10-2002 and its losses were claimed to be due to the lesser procurement price and operational cost paid by the Federation in contrast with the higher procurement price and operational cost the union had to incur. The irregularities noted in respect of Prakasam union were in respect of purchase of plant, machinery, equipment, land and vehicles, construction of buildings, appointments made on contract basis, misuse of funds, transport contracts, heavy sale proceeds due from sales agents and spoilage of milk. These managerial lapses are as much possible under 1964 Act as under 1995 Act.

It is only recommendation No.10 concerning Visakha Union that referred to no neighbouring State having a similar enactment like 1995 Act applicable to the dairy sector. The detrimental and adverse consequences and effects on the dairy co-operatives due to 1995 Act stated in the general recommendation of the House Committee were not correlated to the irregularities noted by the Committee in respect of Chittoor, Visakha and Prakasam Unions.

Non-compliance with the terms and conditions of the transfer agreements regarding business and service matters and irregularities noted in the audit reports and the House Committee Report, thus, appear to be possible both under 1995 Act and 1964 Act, which cannot be, hence, a valid and acceptable ground for classification of the dairy/milk co-operative societies into a separate class. It is also not the specific case of the Government that such violations or irregularities did not appear in respect of any other societies or class of societies functioning under 1995 Act or such violations noticed in respect of any other societies or class of societies were more effectively dealt with in respect of the societies registered and continued under 1964 Act.

Precedents always frowned upon legislative and administrative decisions based on no adequate data, no relevant evidence, no verifiable material and no rationality of conclusions. Illustratively, **B. Archana Reddy and others v. The State of A.P. and others**[32]. As held in **Indra Sawhney v. Union of India and others** (20 supra), notwithstanding any legislative declaration of facts, the Court could certainly examine whether the so-called known facts were indeed non-existent.

The conclusions of the House Committee in respect of two district unions out of eight district unions converted into 1995 Act without any study or examination of the remaining six district unions and thousands of primary milk producers co-operative societies converted into or directly registered under 1995 Act cannot be considered to provide adequate relevant material for any rational conclusion. The specific recommendations of the House Committee concerning Chittoor, Visakha and Ongole dairy do not establish any link between the situations necessitating the recommendations and the working of 1995 Act. Recommendation No.10 in respect of Visakha dairy referring to the non-existence of any similar Act in neighbouring States in respect of dairy sector appeared to be an isolated insertion completely out of place in the context of other recommendations. While the report of the group of Ministers is not before the Court, the general recommendation reflecting the strong opinion of the House Committee about the detrimental and adverse consequences and effects of 1995 Act on the dairy co-operatives does not appear justified by any material placed before the Court to be based on existing known facts. When the reasons stated as justifying the drastic action are not demonstrated to be true, the exercise of legislative power is open to be termed as colourable. The ultimate, if not the sole

apprehension that led to the impugned legislation is the likelihood of the Government assets built with public funds and developed with public money going into private hands. But the possession and management of the Government assets by the district unions was admittedly since about 1980 i.e. since about one and half decades prior to 1995 Act and the regulatory environment under either Act can take care of any possible deviation from the statutory norms. The impugned legislation makes no difference to the dispute as to whether the district unions are only managers and not owners of the assets under their management and possession and whether appropriate legal action is open for such controversies is not disabled by 1995 Act nor is it strengthened by 1964 Act. When only a limited number of district unions have such assets in their possession and the district unions are repaying the loans by themselves with which the assets were built, refusal of the right to choose the governing enactment to a large number of unconcerned societies cannot be termed as a good basis for a reasonable classification. The random sample survey by the House Committee does not appear to match the material produced by the writ petitioners about the financial and administrative health of the societies under 1995 Act in contrast with the deterioration suffered by the societies continuing to be governed under 1964 Act.

Many Primary Mutually Aided Co-operative Societies came into existence and registered directly under 1995 Act like the Mulkanoor Women Mutually Aided Milk Producers Co-operative Union Limited (W.P. No.3502 of 2006). The impressive performance of that society as elaborated in its affidavit in support of its writ petition may or may not be illustrative of any spectacular performance by such new societies, but the fact remains is that

none of such new societies which were directly registered under 1995 Act have any element of Government assistance or Government assets or Government involvement in any manner. How the reasons attributable to the societies originally registered under 1964 Act and later converted into 1995 Act can be fastened to these new societies, is unintelligible. Though there was no unanimity on the exact number of new societies, admittedly such societies are thousands in number and axing such societies from total autonomy to complete subjugation is patently and latently without any explic able reason. Bundling together the old dairy co-operatives allegedly accountable for Government monies and properties and the new milk societies without any such fetters, is tying together the societies dissimilar in all respects except that they deal with milk and milk products. The entire statement of objects and reasons for the Bill or the House Committee report did not ascribe a single reason for nullifying the independence of these new societies. When the eligible individuals are free to organize themselves into a mutually aided co-operative society for every other object, purpose and activity, depriving only those eligible individuals who wish to form or formed a dairy/milk co-operative society under 1995 Act of the option to choose between 1995 Act and 1964 Act, is clearly hostile discrimination and unreasonable classification without any basis. The principle laid down in **P.A. Inamdar and others v. State of Maharashtra and others**[33] and **T.M.A. Pai Foundation and others v. State of Karnataka and others**[34] about the need to permit unaided institutions not deriving any aid from the State funds to have greater and maximum autonomy with regard to their own administration with minimal State regulation only with a view to maintain fairness and

transparency and to check exploitation of the circumstances, is squarely applicable to such new societies. The required statutory regulation is fairly present in the provisions of 1995 Act.

Apart from the question whether without making corresponding amendments in 1964 Act, any deemed registration under that Act is legally possible, the State Government cannot take advantage of its own failure to convert the Federation into 1995 Act as decided earlier and not shown to have been changed until now to contend that the 3-tier structure to have become impossible due to 1995 Act. The fact that more than one Federation can possibly be formed under 1995 Act, also may not be relevant ground when the dairy sector is not a closed enclave of the co-operatives or the Government, but is an open field for any private operators also.

Shelter is sought to be taken under Article 48 of the Constitution that the State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines. Article 43 mandates that the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas. Promotion of animal husbandry on modern and scientific lines has to be on co-operative basis if both the Articles 48 and 43 are read together. Under Article 48, agriculture and animal husbandry are tagged together and not split up. Various reports of the Committees, Study Groups and Task Forces have reiterated that animal husbandry has to be organized on modern and scientific lines. National Dairy Development Board, Government of India and even Dr. V. Kurien, the founder of Anand Pattern, have advised the state to stick to the progressive co-operative legislation like the 1995 Act to promote voluntary, self-reliant and autonomous co-operative societies than to take the retrograde step of reverting to excessive State control and unregulated bureaucratic intervention. While this is not to say that

the Court is embarking upon deciding the wisdom or otherwise of the State policy, this is only to confirm the absence of any reasonable basis for the discriminatory classification made. While the impugned amendments, thus, appear to be contrary to the objects of 1995 Act and the national policy, the claim that the autonomy of the district unions or the primary societies is unaffected by the amendments but only accountability is ensured, is rather a mirage than truth. For these reasons, the classification of dairy/milk co-operative societies has to be considered as unreasonable.

Nexus with the object:

After the advent of 1995 Act, there was a co-operative work shop at the office of the Federation on 20-11-1995 in which it was resolved to take up the implementation of 1995 Act by the Unions and the Federation in a phased manner after the bye-laws of the primary societies are finalized and the societies are registered under 1995 Act. The Milk Commissioner followed it up by asking the Unions to intimate the action taken in this regard. The Milk Commissioner also issued a circular on 16-02-1996 to the General Managers of the Milk Unions to ensure expeditious implementation of the instructions regarding conversion of the Primary Societies and District Unions into 1995 Act. The Milk Commissioner issued a circular dated 15-12-2000 stating that in pursuance of the review meeting in the Chambers of the Chief Minister on 08-11-2000, the Programming Committee meeting on 24-11-2000 and the review meeting of the Federation on 27-11-2000, detailed guidelines were issued to get all the Milk Producers Associations numbering over 400 in the State registered under 1995 Act by 31-03-2001. The Unions and Milk Sheds were instructed to ensure the same and to

title every society as 'Vijaya Milk Producers Mutually Aided Co-operative Society Limited' (Name of the village) and these instructions were reiterated in further communications.

Letter No. 5126/Dairy.II (1)/2003, dated 11-09-2003 from the Principal Secretary to Government, Animal Husbandry, Dairy Development and Fisheries Department to the Managing Director of the Federation, referred to the review of the performance of dairy sector in the State on 26-08-2003 with the Chief Secretary, wherein the Chairmen of several District Milk Unions also participated. It was further stated that consequent on the discussions had, the decisions enumerated were arrived at in the meeting, the first of which was to take steps to register the Federation as State Marketing Federation under 1995 Act. It was also further decided that MATA Federation shall cease to exist from the date of such registration and Guntur and Visakha Unions shall join the State Marketing Federation. It was also decided to register all the Milk Sheds of the Federation under 1995 Act and discourage formation of new Primary Societies/District Unions under 1964 Act. Decisions were further taken regarding the operation of Milk Products Factory, Hyderabad under the Federation, marketing activities of respective Unions, marketing the products of the District Unions by the State Federation and supply of products as indented by the Federation for which payments are to be made as agreed upon.

It is self-evident from this letter that bringing the entire dairy sector under 1995 Act and discouraging any new societies under 1964 Act were the decisions which could not have been taken if the dairy sector suffered from disadvantages due to functioning under 1995 Act till that time.

Thus, not only the District Unions and the Primary Co-

operative Societies exercised their option on the volition of their members to convert into 1995 Act but also the State Government and the Milk Commissioner encouraged and monitored such conversion. There is no material on record to show as to why the Federation was not converted into a State Marketing Federation under 1995 Act in pursuance of the decisions in the meeting dated 26-08-2003. Guntur and Visakha Unions cannot be accused of not discontinuing MATA Federation, as the decision taken in that meeting was to discontinue MATA Federation from the date of registration of the Federation under 1995 Act on which Guntur and Visakha Unions shall join the State Marketing Federation. The decisions taken eight years after 1995 Act to discourage formation of any primary societies or unions under 1964 Act cannot signify any decline in dairy sector due to adoption of 1995 Act by the primary societies and district unions or any prejudicial activities by them offending the security of the dairy infrastructure developed at public expense or the goodwill and repute of Vijaya brand or the business or interests of the Federation.

The very intention of the Legislature in enacting 1995 Act was to promote voluntary, self-reliant, self-financing and autonomous

co-operative societies functioning as per co-operative principles away from State Government control as per their own bye-laws. The 1995 Act is in tune with Brahm Perkash Committee Report and the Report of the Study Group on co-operative law in Andhra Pradesh. It was hailed as a progressive co-operative legislation and the Report of the Task Force of the Government of India dated 04-02-2005 hailed the 1995 Act as a significant step towards reform and was followed by eight other States. The maladies in co-operative movement noted by various Committees and Groups

appointed by the Central or State Governments were, thus, attempted to be remedied by 1995 Act leading to the emergence of a new generation autonomous co-operatives. Even the founder of Anand Pattern Dr. V. Kurien in his letter dated 21-10-2005 hailed the opportunity to the co-operatives in the State of Andhra Pradesh to function as truly autonomous and democratic people's institutions.

The District Milk Unions are accused of violating the transfer agreements and instructions and directions of the Federation and the Government both in business and service matters. The final audit reports of the District Unions were claimed to be showing serious financial irregularities and mismanagement. The respective District Milk Unions answered these allegations in their respective rejoinders/replies. Complicated questions of fact in dispute will not commonly be gone into, analysed and decided in exercise of writ jurisdiction. The District Unions claim that their audits were completed up to 31-03-2005 and the Government Departmental Auditors themselves issued 'A' class audit certificates throughout, while the Federation itself was issued 'B' class audit certificate. The District Unions claim significant and noteworthy increase in procurement and sales of milk, payment of purchase price to the milk producers, assets, infrastructure and business. They claim to be paying consortium to the Federation whenever Vijaya brand name is used and to be not defaulting in payment of pension or other contributions. They claim full administrative and disciplinary control over their staff in tune with 1995 Act and their bye-laws. They also claim to be standing guarantee for loans to the farmers for purchase of milch cattle, to be paying compensation on the death of milch animals, to be subsidizing the premium per person

for Jana Sri Bhima Yojana of Central Government, to be subsidizing purchase of veterinary medicines and vaccines, to be arranging check-up of milch animals by veterinary doctors and to be serving through artificial insemination centers. They claim the distinction of being awarded various ISO and other certificates in appreciation of their distinguished performance. Even the contents of the House Committee Report do not seriously dispute these claims and if there are any instances of mismanagement or irregularities, enquiry and action are contemplated by 1995 Act. The three District Unions that remained under 1964 Act in contrast are either dead or on the death-bed and the so-called ideal regulatory environment of 1964 Act did not save them or the public properties and monies entrusted to them. Killing the goose that is laying golden eggs will not be a wise and pragmatic cure for any disease from which the goose suffers.

The main object of the impugned Ordinance/Act was stated in the Statement of objects and reasons to the effect that there is a necessity to strengthen the Dairy sector by retaining or reviving the three tier set up under 1964 Act. However, there is no specific provision in the 1964 Act providing for such three tier set up and it is only Section 18 that permits the Registrar to classify societies in accordance with the rules with reference to their objects, area of operation, membership or any other matter specified in the rules. The Andhra Pradesh Cooperative Rules, 1964 made in exercise of the rule making power Section 130 (1) of 1964 Act alone provided for classification of societies and Dairy/Milk Cooperative Societies were not specifically mentioned among the societies so classified under the rule. Sub-rule (4) of Rule 12 further enables the Registrar to sub-divide any class of societies into categories with reference to the composition of their membership, the nature of the

business transacted by them or any other similar manner and it is not claimed that Dairy/Milk Cooperative Societies were the subject of any such sub-division. It is only sub rule 5 of Rule 12 that provides for further classification of apex societies, central societies and primary societies among federal societies as defined in Section 2(e) of 1964 Act as meaning societies to which similar class of societies are affiliated. 1995 Act also provides for a federation as defined in Section 2(k) meaning mutually aided Cooperative Societies registered under Section 4, whose members are mutually aided Cooperatives. If the definition of a federal society under Section 2 (e) of 1964 Act enables formation of Apex Societies, Central Societies and Primary Societies, there is equally such facility under 1995 Act also for formation of federations at the district level with the primary mutually aided Cooperative Societies constituting its membership and a federation at the state level with such district federations which are also mutually aided Cooperative Societies constituting its membership. As such, the exclusion of the Dairy/Milk Cooperative Societies from 1995 Act to achieve the object of a three-tier structure is an unreal and non-existent cause and is only a ruse. The exclusion thus has no nexus with the objects sought to be achieved.

The protection of Government assets is stated to be another reason for the exclusion of the Dairy/Milk Societies from 1995 Act. Under the 1995 Act the societies shall maintain accounts, records and documents, get their accounts audited and Section 28 specifically provides for special audit to be initiated by the Registrar at the request of any creditor impleading the Government or other external individuals or institutions. Section 28 specifically provides for recovery of costs from the society or

persons responsible for mismanagement where such special audit reveals serious mismanagement of Cooperative Societies. The Registrar is also empowered under Section 29 to hold an enquiry into specific matters relating to any gross violation of any provisions of the Act by the society. For the purposes of Sections 28 and 29 powers were given to summon and examine persons and documents under Section 30 and in case of any special audit or enquiry revealing mismanagement on the part of the office bearers or the Boards of Directors, Section 31 provides for convening a general body meeting or approaching the Cooperative Tribunal for necessary action. The Tribunal is empowered under Section 33 to direct recovery of any loss from the concerned person. Section 34 provides for filing of annual returns by the societies before the Registrar. Section 38 provides for offences and penalties, while Section 31 also preserves the liability of the office bearers or Directors for any civil and criminal proceedings. In case of dissolution by the members or by the Tribunal, the liquidator can settle any claims against the Cooperative Societies. The decisions, decrees and orders are executable for which Chapter X of 1964 Act is made applicable.

Under 1964 Act also the procedure for audit, enquiry, inspection and surcharge etc., is provided and it is nowhere stated as to how its provisions are more effective or comprehensive in the matter of protecting any Government assets in the possession of the societies or how the provisions of 1995 Act are inadequate for the purposes.

Even in the counter affidavit filed by the Managing Director of the Federation in W.P. No.963 of 2004 which is filed by the Federation Staff and Workers Union against the State Government and 7 others, it was specifically stated that the District Unions are

protecting the interests of milk industry and also the brand image and reputation in the market even after conversion under 1995 Act and are selling their products by maintaining the same quality and standard through the Federation paying consortium and maintaining a revolving fund to protect the interests of the employees. The affidavit further stated that the Federation and District Unions are making collective efforts to take the reputation of Vijaya brand to the standards of international quality. Thus, it is clear that even until June 2004 the Federation found everything to be positive and nothing negative in the functioning of the District Unions under 1995 Act. Even Vijaya brand sales by the Federation in the State were stated to have increased from 1.7 lakh litres per day in 1997-98 to around 2.70 lakh litres per day during 2004-05. In fact, the Federation itself informed the District Unions that on conversion into 1995 Act, they ceased to be members of the Federation and that they have to apply for admission as members without voting rights under 1964 Act. The Federation further informed all the Unions under 1995 Act that without memorandum of understanding with the Federation, the Unions are prohibited from using Vijaya brand. If so, it is also inexplicable as to how the Government and Federation can complain that the District Unions or Primary Societies under 1995 Act are exhibiting such a degree of non-cooperation with the Federation and the Government as to prejudicially affect the infrastructure, assets and interests of the dairy movement in the State.

It is true that in G.O. Ms. No.551 dated 10-12-1980, the Government decided to develop dairying on cooperative lines adopting Anand Pattern for all the districts in the State. It is also true that under G.O.Ms. No.67, dated 31-01-1985, permission was

given to hand over the management of the respective Unions and operations only together with related activities and the employees without any specification of transfer of ownership. But how the object of adopting Anand Pattern was frustrated or any differences about the effect of the terms and conditions of transfer agreements have damaged such object, is not established. Dr. V. Kurien, the father of Anand Pattern, cannot be considered oblivious to the effect of 1995 Act or 1964 Act on the 3-tier co-operative infrastructure on the lines of Gujarat model. When he hailed, in his letter dated

21-10-2005, the 1995 Act as a progressive co-operative legislation permitting truly autonomous and democratic people's institutions, he would not have conceived any damage to the 3-tier structure by the new Act. When he advised the State Government not to revert to the old Act, which will be a huge backward step and opined that it cannot be a solution to the problems of dairy co-operatives, his consciousness about the interests of 3-tier co-operative structure being safe under 1995 Act is evident. There is nothing which debars the formation of primary milk producers co-operative societies, district unions and State Federation with the later two being federations with the primary societies and district unions respectively as members, under 1995 Act. The situation is the same under 1964 Act, which provides for federal societies under Rule 12 of the statutory Rules referring to apex societies, central societies and primary societies. As such, the avowed object of bringing in the impugned legislation to restore the 3-tier structure is baseless and classification of the dairy/milk co-operative societies as a separate class on that count has no nexus with the object sought to be achieved.

Similar restrictions are in existence in Karnataka and

Madhya Pradesh states, since the inception of the new legislations and are not intermediary introductions. The alleged severe problems which the dairy farmers are facing from the mutually aided

co-operative societies are not documented in any manner and which ever primary milk producers co-operative societies approached this Court had expressed great satisfaction and no complaint or grievance about the functioning of the converted district milk unions. The milk purchase price paid to the dairy farmers had a substantial increase and other forms of assistance was significant from these district unions compared to the federation or other societies continuing under 1964 Act.

The statement of objects and reasons for the Bill also referred to continuous drought since 5 years, consequent crop failures, dearth of cattle feed, suicide by large number of farmers and death of milch cattle. But none of these adversities can be laid at the door of the unions and the societies functioning under 1995 Act. The Government taking up the cause of all types of farmers on top priority and preparing various plans to augment the agriculture and allied activities, has nothing to do with the societies being governed by either Act. Any adverse effects on the interests of the dairy farmers due to registration or conversion of dairy/milk co-operative societies under 1995 Act are, thus, not shown to be existing or real. Any prevention of Government assets going into private hands and protection of Government assets built up with public money and funds can, as already stated, be achieved under either Act and therefore, the classification of the dairy/milk co-operative societies into a separate class subjected to hostile and discriminatory treatment by denying the choice to choose between the two legislations in

force governing the same co-operative movement, has not been probablised to be having any nexus with the object sought to be achieved by the impugned legislation.

Freedom to form associations:

The right to form associations guaranteed by Article 19 (1) (c) of the Constitution is subject to imposition of reasonable restrictions in the interests of the sovereignty and integrity of India or public order or morality. As pointed out in **Chintamani Rao and another v. State of Madhya Pradesh**[35] and **M/s. Dwaraka Prasad Laxmi Narain v. State of Uttar Pradesh and others**[36], the phrase "reasonable restriction" connotes that the limitation imposed upon a person in enjoyment of a right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public. The word "reasonable" implies intelligent care and deliberation that is the choice of a course, which reason dictates. When the right to form associations as guaranteed by Article 19 (1) (c) is made subject to rigorous restriction that the association in question must secure and continue to enjoy recognition from the Government, the restriction imposed was held to have made the guaranteed right ineffective and even illusory in **O.K. Ghosh and another v. E.X. Joseph**[37].

In **M. Sitharamachary v. The Senior Deputy Inspector of Schools, Gannavaram Range and another**[38], the right which provided for compulsory membership of all teachers in Government sponsored associations, was held to be an abridgment of right guaranteed under Article 19 (1) (c) of the Constitution.

In **Smt. Damyanti Naranga v. The Union of India and**

others[39], the Supreme Court was dealing with a legislation under which the admission of future members is no longer at the choice of the original members and the members of the governing body were

deprived of the property, which still continued to vest in them in spite of passing of the Act. While the Supreme Court noted that it is true that after an association has been formed and the right under Article 19 (1) (c) has been exercised by the members forming it, they have no right to claim that its activities also must be permitted to be carried on in the manner they desire. It still held that the right guaranteed by Article 19 (1) (c) can be effective only if it is held to include within it the right to continue the association with its composition as voluntarily agreed upon by the persons forming the association. It further held that the total deprivation of property instead of regulating the management of the affairs of the society or its properties, cannot clearly be justified as a reasonable restriction in public interest. Though at the time when the Act was passed, litigation was going on between members of the society and the affairs of the society were probably in a mess, the Supreme Court held the remedy to be not depriving the society of its property altogether, but only to impose reasonable restrictions to ensure proper preservation of the property of the society and its proper management.

In **Seethapathi Nageswara Rao and others v. The Government of Andhra Pradesh and others**[40], **Lalit Narayana Mishra Institute of Economic Development and Social Change, Patna v. State of Bihar and others**[41] and **The Tata Engineering and Locomotive Co. Ltd., v. State of Bihar and others**[42], it was made clear that the right under Article 19 (1) (c)

extends only to the formation of an association or union, but it does not carry with it a further guarantee that the objects or purposes or activities of an association so formed shall not be interfered with by law except on grounds as mentioned in Article 19 (4). It was also pointed out that once a company or corporation is formed, the business which is carried on by the said company or corporation is the business of the company or corporation and is not the business of the citizens who get the company or corporation formed or incorporated. In **Lalit Narayana Mishra's case** (41 supra), no restriction was placed on the functioning of the society and composition of the society was not touched at all. Hence, it was held that so long as there is no interference with the society, its constitution or composition, it is difficult to say that because of the taking over or acquisition of the institute which was the only property or activity of the society, the fundamental right of the society to form association has been infringed.

In **Mohammed Faruk v. State of Madhya Pradesh and others**[43], the onus of proving to the satisfaction of the Court that the restriction is reasonable, was held to lie upon the State.

In **Dharam Dutt and others v. Union of India and others** (10 supra), it was stated that a fundamental right to form an association cannot be coupled with the fundamental right to carry on any trade or business and that a restriction on the activities of the association is not a restriction on the activities of the individual citizens forming membership of the association. In that case, the society was left untouched and uninterfered with in respect of membership or the governing body or the activities and the new body corporate is different from the society.

Similarly, in **All India Bank Employees Association v. National Industrial Tribunal (Bank Disputes), Bombay and**

others[44] it was pointed out that as the stream can rise no higher than the source, associations of citizens cannot lay any claim to rights not open to citizens or claim freedom from restrictions to which the citizens composing it are subject.

In **Board of Trustees, Ayurvedic and Unani Tibia College, Delhi v. State of Delhi (now Delhi Administration) and another**[45], while classification due to exceptional features which are not possessed by others, was held permissible, the right to determine the body, which shall administer the funds or property of the dissolved society was held to be not a right of property.

In **Hari Chand Sarda v. Mizo District Council and another**[46], it was held that the legislative policy must provide suitable machinery for implementing that policy in such a manner that such implementation does not result in undue or excessive hardship and arbitrariness. It was also pointed out that where a provision restricts anyone of the fundamental rights, it is for the State to establish the reasonableness of such restriction and for the Court to decide in the light of the circumstances in each case, the policy and the object of the impugned legislation and the mischief it seeks to prevent.

The membership of a Mutually Aided Co-operative Society consists of not less than 10 individuals from different families or two or more co-operative societies registered under Section 4 of 1995 Act. While of course, a society registered under 1964 Act can convert itself into one under 1995 Act, the membership of the co-operative society registered under 1964 Act is open to the Government also. The Boards of Directors of Mutually Aided Co-operative Societies are elected by the members, while the Managing Committee of a co-operative society under 1964 Act is

subject to the Government or any authorities specified by it having the right to nominate to the Committee not more than three persons or 1/3rd of the total number of persons whichever is less, notwithstanding anything contained in the bye-laws of the society, where the Government subscribed to the share capital or assisted or stood as guarantor. Reservation for weaker sections, minorities and women, including nominations from such categories to the managing committees are contemplated by Section 31 of 1964 Act, which feature is non-existent in 1995 Act. The role of the Government and the Registrar is almost unlimited and unrestrained under 1964 Act, while it is limited and restricted under 1995 Act. The Government is not having even rule making power under 1995 Act, and the co-operatives govern themselves by their own byelaws. The qualifications and disqualifications from membership are not identical and the Boards of Directors under 1995 Act are continuous bodies with staggered terms for the Directors, while the Managing Committees are for fixed terms under 1964 Act. The provisions relating to staff, share capital, mobilization of funds, investment of funds, audit, disputes, dissolution and final disposal of assets are distinct and different under the two Acts. By compulsorily converting the Mutually Aided Co-operative Societies registered under 1995 Act into Co-operative Societies deemed to be registered under 1964 Act, the societies, their constitution and composition are straight away interfered with and it was not mere interference with the properties or activities or business of the societies. The members of the affected societies cannot claim any more the right to continue the societies with their composition as voluntarily agreed upon by them. The content and effect of the impugned Ordinance/Act is not merely to interfere with the activities or business or properties

of the societies but went beyond the object of proper preservation of the property of the societies and their proper management. Restrictions are imposed, thus, on the functioning of the societies themselves and imposing compulsory membership in co-operative societies under 1964 Act on the members of the Mutually Aided Co-operative Societies cannot be considered to be satisfying the test of reasonableness. Even if it were to be contended that the members of the societies converted from 1964 Act into 1995 Act are only being restored to their original status, the same cannot hold good in respect of the members of societies directly registered under 1995 Act. Under the circumstances, the exercise of fundamental right guaranteed under Article 19 (1) (c) to form associations or unions is undoubtedly infringed by the impugned Ordinance/Act.

Retrospective effect:

Section 1 (3) of the impugned Ordinance/Act made the legislation come into force with effect from 01-06-1995 i.e. the date of 1995 Act coming into force. The registration or conversion of a dairy/milk co-operative society under 1995 Act was prohibited by adding a proviso to Sub-section (1) of Section 4 of 1995 Act apparently with effect from 01-06-1995 though in fact a number of co-operative societies under 1964 Act were converted into 1995 Act and functioned as mutually aided co-operative societies from 01-06-1995 to 01-02-2006 and though a number of new societies were directly registered as mutually aided co-operative societies and functioned as such since after 01-06-1995 till 01-02-2006.

Sub-section (1A) of Section 4 of 1995 Act added by the impugned Ordinance/Act excluded all dairy/milk co-operative societies registered or deemed to have been registered or converted under 1995 Act from the provisions of 1995 Act and deemed them to

have been registered and continued under the provisions of 1964 Act since 01-06-1995. This deeming provision intends to erase the functioning of the subject societies under 1995 Act throughout, even though during the period they functioned under 1995 Act, Boards of Directors were elected, the said Boards managed the societies, the societies conducted business and acted in service matters and the societies acquired and dealt with assets, discharged or incurred liabilities and entered into or relieved themselves from the obligations of third parties etc. The effect of exclusion from 1995 Act and deeming inclusion under 1964 Act since inception will have serious repercussions and far reaching consequences on every aspect of the factual events happened, rights created and liabilities incurred. Vested rights were obviously not left untouched. By setting the clock back to the date of commencement of 1995 Act, all acts or omissions or assets or liabilities of the societies, the Board of Directors, the members and third parties interacting with the societies ostensibly become subject to the touch stone of being in conformity with the provisions of 1964 Act and the Rules made thereunder.

In **Virender Singh Hooda and others v. state of Haryana and another**[47], it was held that if the Legislature has the power over the subject matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions and even vested rights can be taken away by retrospective legislation unless violative of Articles 14, 16 and any other constitutional provision. It was also pointed out that whenever any amendment is brought in force retrospectively or any provision of the Act is deleted retrospectively, in the process rights of some are bound to be affected one way or the other and in every case, violation of

Article 14 cannot be urged.

In **S.S. Bola and others v. B.D. Sardhana and others**[48] also it was laid down that it would be valid for the Legislature to make an enactment with retrospective effect provided no fundamental right is infringed by reason of it taking away the vested right.

In **Chairman, Railway Board and others v. C.R. Rangadhamaiah and others**[49], an amendment having retrospective operation, which has the effect of taking away the benefit already available under the existing rule, was held arbitrary, discriminatory and violative of Articles 14 and 16.

In **Union of India and others v. Tushar Ranjan Mohanty and others**[50], it was observed that the power to make laws with retrospective effect cannot be used to justify the arbitrary, illegal or unconstitutional acts of the Executive.

In **State of Gujarat and another v. Ramanlal Keshav Lal Soni and others**[51], it was held that the Legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws, but since laws are made under a written constitution and have to confirm to the dos and don'ts of the constitution, neither retrospective nor prospective laws can be made so as to contravene fundamental rights and the law must satisfy the requirements of the Constitution taking into account the accrued or acquired rights of the parties today. The Supreme Court observed that the law cannot say, 20 years ago the parties had no rights, therefore, the requirements of the constitution will be satisfied if the law is dated back by 20 years and we are concerned with today's rights and not yesterday's. The Apex Court was emphatic

that a Legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of 20 years and that would be most arbitrary, unreasonable and a negation of history. It was further stated that today's equals cannot be made unequal by saying that they were unequal 20 years ago and we will restore that position by making a law today and making it retrospective, and constitutional rights, constitutional obligations and constitutional consequences cannot be made tampered with that way.

Thus, though the Legislature is competent to make a retrospective legislation even taking away vested rights, such retrospectivity cannot be in contravention of fundamental rights or in ignorance of the march of events and constitutional rights accrued over a long period of time. Though it may be true that the societies or members may not have any fundamental right to choose the legislation by which they should be governed, having provided such choice by law which the societies and members utilized and acted upon for a long period on the encouragement by the State Government, the whole-sale reversal denying such choice since inception will be ignoring the march of events. Saying that the societies and members had no such choice until 1995 Act and therefore, cannot insist on such choice, may be in violation of the principle laid down in **Ramanlal Keshav Lal Soni's case** (51 supra). As the retrospective legislation undoubtedly interferes with vested rights and accrued rights and such interference is based on a classification not in tune with the parameters of equality under Article 14 and not having any nexus with the objects sought to be achieved, the retrospectivity given to the impugned Ordinance/Act cannot

ex facie be considered to be in tune with the fundamental rights. It is also not stated as to why the exclusion from 1995 Act and compulsory inclusion under 1964 Act becomes necessary to be implemented retrospectively and as to how the object of the legislation cannot be achieved by limiting it to prospectivity. As held in **T.K. Kapur and others v. State of Haryana and others**[52], the date from which the rules are made to operate must be shown to bear, either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period. The validity of the impugned legislation, thus, becomes doubtful on this count also.

Promissory estoppel:

The development of dairy sector in the State of Andhra Pradesh commenced with the Integrated Milk Project in 1960 and a Dairy Development Department was formed by the State Government in 1970-71. All the dairy development activities were transferred to the Andhra Pradesh Dairy Development Corporation Limited fully owned by the State Government, in 1974. The Andhra Pradesh Dairy Development Co-operative Federation Limited was registered as a co-operative society under 1964 Act on 01-10-1981 and all the assets and dairy infrastructure were transferred to the Federation on lease basis. The State Government received assistance to replicate Anand model of Gujarat evolved by Dr. Verghese Kurien with a 3-tier co-operative model with a Village Dairy Co-operative, a District Milk Union and a State level Federation handling production and procurement, processing and packaging and marketing respectively. Under Operation Flood I, II and III, the Indian Dairy Corporation (now

National Dairy Development Board) and other Agencies extended extensive assistance. District Unions were registered as co-operative societies under 1964 Act and primary co-operative societies were organized at the village level. Vijaya brand of products were developed. In 1980, the State Government permitted the Federation to hand over the management of the respective Unions and operations to respective District Unions subject to conditions and stipulations under the transfer agreements. On the enactment of 1995 Act, eight District Unions converted themselves into Mutually Aided Co-operative Societies and a good number of dairy/milk primary co-operative societies also resorted to such conversion. The role of the State Government in developing dairy sector was elaborately stated in the counter-affidavits, and needs no replication. The Government claims that assets with the District Milk Unions built through Government funds are now valued at more than rupees thousand crores.

Since the transfer of the assets and management of the activities to District Unions, the District Unions further developed the infrastructure and facilities. The District Unions claim that the book value of the assets transferred to them is practically nil as of now and that the transfer involved negative net worth with the liabilities being more than the assets. They claim that the National Dairy Development Board released the State Government from its liabilies for respective guarantees and that they are discharging the loans with interest due to the National Dairy Development Board and other Agencies. They further claim that even the development of assets and infrastructure prior to the transfer were mostly with the funds provided by the Central Government and other Agencies including the National Dairy Development Board

and its predecessor and hence, the State Government cannot claim ownership of these assets which are subject to the understanding between the State Government and those Agencies, while releasing substantial assistance under Operation Flood I, II and III Programmes.

The agreement between the Government of Andhra Pradesh and Indian Dairy Corporation dated 08-01-1981 recorded the undertaking by the State Government in order to avail itself of the benefit under Operation Flood II Project and to assist the Indian Dairy Corporation in complying with various covenants in the Project. The State Government undertook to take necessary action including the amendments to the State Co-operative Act to facilitate formation of dairy co-operative societies, unions and federations in the project area to enable them to function in accordance with the bye-laws which are satisfactory to Indian Dairy Corporation and International Development Association. The State Government also agreed to transfer to the Co-operative Institutions upon mutually agreed terms and conditions satisfactory to the International Development Association such dairy plant, chilling facilities and other assets for milk production enhancement belonging to the State Government and/or allied agencies and located in the Project Area. The State Government also undertook to provide Co-operative Institutions necessary land required for the project and assist in providing electricity, water and other facilities. It undertook to permit full freedom to Co-operative Institutions in service matters subject to the directions of a Committee. It further undertook not to restrict the power of the Co-operative Institutions concerning the procurement price and sale price, etc. It was in consideration of the State Government undertaking that the Indian Dairy Corporation agreed to perform all

functions assigned to it in the project agreement.

The letter of understanding dated 21-01-1988 from the State Government to the National Dairy Development Board mentioned that under Operation Flood III Project, the Indian Dairy Corporation was designated to receive financial assistance from the World Bank, the EEC and other funding agencies. The letter of understanding like the agreement dated 08-01-1981 referred to the implementation of the project through Anand Pattern Co-operatives of Milk Producers **owned and controlled by farmers.** The State Government undertook to fulfill the conditions for implementation of the project by transferring ownership of all assets like processing plants, cattle feed plants, etc. to the District Unions concerned within one year and to establish elected Board of Directors in all the Unions and Federations. The State Government was required to take necessary legislative action. The Indian Dairy Corporation would consider withdrawing financial support from the concerned Federation/Union in case of non-compliance. It was specified that the State Government, the Federation and the Unions would provide adequate autonomy to the co-operative structure and that they will comply with all the terms and conditions specified by the Government of India, the Indian Dairy Corporation, the World Bank, the EEC and other funding agencies for release of grants and/or loans under Operation Flood III for the project area and assist in providing facilities.

Thus, the State Government received assistance under Operation Flood Programmes specifically undertaking to transfer the assets and infrastructure to co-operative institutions, to provide necessary land and other facilities and to provide adequate autonomy to the co-operative institutions, if necessary

by making amendments to the State Co-operative Act. Having received extensive assistance from the Indian Dairy Corporation and National Dairy Development Board and other Agencies for development of dairy infrastructure on such undertakings and understandings, the State Government now seeks to resile from the same by seeking to withdraw the autonomy granted to the co-operative institutions and by claiming continued ownership over all the assets that were earlier transferred to the District Unions. The Supreme Court held in **Mahabir Vegetable Oils Pvt. Ltd., and another v. State of Haryana and others**[53] that it is beyond any cavil that the doctrine of promissory estoppel operates even in the legislative field. The agreement dated 08-01-1981 and the letter of understanding dated 21-01-1988 emanating from the State Government and acted upon by the State Government and the concerned Agencies through release of vast assistance with which the dairy infrastructure was developed in the State, estop the State Government in law, justice and equity from going back on its assurances after having received the benefit under the agreement and understanding. The impugned Ordinance/Act which in effect and substance seeks to implement a policy inconsistent with such agreement and understanding, thus, stands inhibited by the doctrine of promissory estoppel operative even in the legislative field.

Stifling the judicial process:

As per Section 4 (3) (e) of 1995 Act it is prescribed as a precondition for conversion of a 1964 Act society into a 1995 Act society, to show that it is not in possession of any share capital from Government and the society is not in receipt of any Government loans or guarantees at the time of applying for

registration as a Mutually Aided Co-operative Society or the society has to show that it has entered into a memorandum of understanding with the Government for any such outstanding loans or guarantees. The Registrar will consider for registration of a Mutually Aided Co-operative Society only if he is satisfied that the application is in conformity with the requirements of Section 4 (4) of 1995. The conversion of eight District Unions and many Primary Milk Producers

Co-operative Societies from 1964 Act to 1995 Act was with the obvious encouragement of the Government and the Milk Commissioner without communication of any objections regarding non-compliance with Section 4 (3) (e). Express or implied consent seems to be present before the Registrars under 1995 Act registered these unions and societies under 1995 Act and issued certificates of registration. Even after such registration, memoranda of understanding between the Government and the concerned societies seem to be under negotiation and at least in respect of one district union, such memorandum of understanding was entered into with the Federation. Then the concerned Registrars revised the certificates of registration indicating that the registration is subject to entering into the required memoranda of understanding. The Registrar of Mutually Aided Co-operative Societies, Andhra Pradesh issued show cause notices dated 29-11-2004 to all the district unions to show cause as to why the registration under 1995 Act shall not be cancelled due to not entering into memoranda of understanding as required by Section 4 (3) (e) of 1995 Act. The district unions filed 8 writ petitions before the High Court and the High Court granted interim orders of suspending the show cause notices as without jurisdiction as the 1995 Act does not contain any provision for cancellation of

registration and the only course left open to a Registrar or an interested party is to seek dissolution of the society under Section 40 and as the Registrar is not conferred with any powers to cancel any registration once effected (Illustratively the order in W.P.M.P. No.31542 of 2004 in W.P. No.24079 of 2004 dated 23-12-2004). It was also observed that the show cause notice was issued to cancel registration several years after the registration with various rights and obligations of the societies intervening in the meanwhile. The writ petitions are pending adjudication. The Federation thereafter filed original petitions in various Co-operative Tribunals seeking dissolution of the district unions under Section 40 of 1995 Act. It withdrew its petition against Prakasam Milk Union on entering into a memorandum of understanding for 3 years on 09-12-2003, while the original petition filed against Visakha Union was dismissed by the Co-operative Tribunal on 19-11-2004, which is under challenge in W.P. No.1420 of 2006. The Government itself filed W.P. No.2749 of 2006 against conversion of Visakha Union into a company. W.P. No.8677 of 2005 is also stated to be pending against the Visakha Union in which stay of enquiry is granted. Krishna Union filed O.P. No.33 of 2005 before Co-operative Tribunal, Vijayawada for declaring its ownership over the infrastructure, assets and land and for determination of their cost for payment. The same also is said to be pending. It is contended by the petitioners that the impugned Ordinance/Act is aimed at scuttling and nullifying the judicial process and decision making which militates against constitutional parameters.

The decisions in **Virender Singh Hooda and others v. State of Haryana and another** (47 supra), **State of Tamil Nadu v. Arooran Sugars Ltd.**[54], **Indian Aluminium Co. and others**

v. State of Kerala and others[55], **People's Union for Civil Liberties (PUCL) and another v. Union of India and another**[56], **In the matter of Cauvery Water Disputes Tribunal**[57] and **S.R. Bhagwat and others v. State of Mysore**[58] were referred to in which the principle laid down is that the Legislature cannot overrule or supersede a judgment of the Court without lawfully removing the defect or infirmity pointed out by the Court or changing the basis on which a decision is given by the Court because it is obvious that the Legislature cannot trench on the judicial power vested in the Courts. The only way to render judicial decision ineffective is to enact a valid law by way of amendment or otherwise fundamentally altering the basis of the judgment either prospectively or retrospectively. The Legislature cannot, by bare declaration without anything more, directly overrule, revise or override a judicial decision.

The statutory conversion of dairy/milk co-operative societies from 1995 Act to 1964 Act will remove the basis for the litigation regarding the show cause notices for cancellation of registration under 1995 Act or dissolution of the societies under 1995 Act, while the cases concerning any enquiries into irregularities or conversion of a district union into a company may not be comprehended by the impugned Ordinance/Act. Except the dismissal of the petition for dissolution concerning Visakha Union by the Co-operative Tribunal, none of the other matters were finally adjudicated and decided by any Court and the suspension of show cause notices for cancellation of registration was under an interlocutory adjudication. If the very basis for the litigation is removed by making these societies fall outside the purview of 1995 Act, the same may not be open to criticism as being done by

a bare declaration or in usurpation of any judicial function or power. Whether the impugned Ordinance/Act is otherwise valid and constitutional is a different question, but the legislation does not appear to suffer from the vice of the Legislature sitting in judgment over a judicial decision or the infirmity of overruling a judgment without removing the basis for a judicial decision. The impugned legislation, hence, cannot fail on this score.

Malice:

In **Dharam Dutt and others v. Union of India and others** (10 supra), it was explained that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the Legislature. The whole doctrine resolves itself into the question of the competency of a particular Legislature to enact a particular law. If the Legislature is competent to pass a particular law, the motives, which impelled it to act, are really irrelevant.

In **G. Nageswararao and others v. A.P. State Road Transport Corporation and another**[59], it was held that the Court will scrutinize the law to ascertain whether the Legislature by device purports to make a law which though in form appears to be within its sphere, in effect and substance, reaches beyond it. If in fact, it has the power to make the law, its motives in making the law are irrelevant.

It was also held in **Gurudevdatta VKSS Maryadit and others v. State of Maharashtra and others**[60] that legislative malice is beyond the pale of the jurisdiction of the law Courts.

It was also pointed out in **State of Andhra Pradesh and others v. Govardhanlal Pitti**[61] that where malice is attributed to

the State, it can never be a case of personal ill-will or spite on the part of the State and if at all, it is malice in legal sense, it can be described as an act, which is taken with an oblique or indirect object and is not
taken bona fide.

As already pointed out, the Legislature is competent to enact the impugned legislation and hence, its motives in making the law are irrelevant. It is primarily contended by the writ petitioners that as the Boards of Directors of the effected district unions are composed of persons affiliated to or sympathetic towards the principal opposition party in the State, the political Government after the change of power in the State is trying to cut short the terms of the elected Boards of Directors and take over the management and assets of the unions and the societies and milk the milk societies by themselves. The insinuation is strongly resented by the respondent State Government and as observed by the Apex Court, the allegations of mala fides are often more easily made than proved. In a democratic polity, the game of one-upmanship between competing political parties becomes inevitable and even if the Government is unable to satisfy the Court about the reasonableness, validity and legality of its legislative action, the same is no proof of mala fides and is no ground to attribute malice in law as vitiating the legislation.

Urgency for Ordinance:

The Ordinance, Government Orders and consequential proceedings are criticized as having been issued post-haste in an extremely arbitrary and capricious manner to present a fait accompli situation to the affected parties depriving them of any opportunity of approaching the Court. It was claimed that the Ordinance was issued when the Legislature was about to meet and

the reasons given for issuing the Ordinance do not disclose any urgency. The response of the Government is that the conversion of Visakha Union into a company imparted a sense of urgency to prevent the other district unions following suit and the Government assets facing jeopardy.

In **Dr. D.C. Wadhwa & others v. State of Bihar & others**[62] and **Gurudevdatta VKSS Maryadit and others v. State of Maharashtra and others** (60 supra), it was pointed out that the power conferred on the Governor to issue Ordinances is in the nature of an emergency power which is vested with the Governor for taking immediate action where such action may become necessary at a time when the Legislature is not in session. The power to promulgate an Ordinance was stated to be essentially a power to be used to meet an extraordinary situation and to be an emergent power to meet the emergency.

Now that the impugned Ordinance was replaced by the impugned Act duly passed by the State Legislature and enacted into law, the justification for invoking the emergency power under Article 213 of the Constitution becomes superfluous in examining the validity and constitutionality of the legislation. Conversion of Visakha Union into a company prompting the State Government to take recourse to this extraordinary power cannot be brushed aside as irrelevant and the satisfaction of the Governor about the existence of the circumstances which render it necessary for him to take immediate action need not be subjected to any scrutiny, as the Act replacing the Ordinance itself is under challenge as of now.

Deemed continuance of Boards of Directors:

The impugned Act/Ordinance introduced sub section 1 (A) in

Section 4 of 1995 Act stating that notwithstanding anything contained in 1995 Act or 1964 Act, all the Dairy/Milk Cooperative Societies registered or deemed to have been registered or converted under the provisions of 1995 Act, shall be deemed to have been excluded from the provisions of 1995 Act and deemed to have been registered and continued under the provisions of 1964 Act. The deeming provision did not explain or restrict the deemed registration or deemed continuation under 1964 Act in any manner. The Statement of objects and reasons for the Bill after giving the reasons for the legislation only stated its object to be to prevent Government assets of huge value going into private hands and to protect Government assets for which reason there was urgent need to exclude Dairy/Milk Cooperative Societies from the purview of 1995 Act. The Statement of objects and reasons did not elaborate the manner of operation of such exclusion and the plain and unambiguous language of sub-section 1(A) is as though the registration and continuation of the Dairy/Milk Cooperative Societies under the 1964 Act by virtue of the deeming provision is on 'as is where is' basis. In G.O.Ms.No.10, dated 4.2.2006, it was assumed that consequent to the promulgation of the Ordinance, the Managing Committees of Milk/Dairy Cooperative Societies elected in accordance with the provisions of 1995 Act ceased to exist and elections as per the provisions of 1964 Act and rules threunder have to be conducted afresh. It is unintelligible as to where from the ceasure of existing managing committees was inferred from the explicit language of the impugned Ordinance/Act.

The deeming provision introduces a legal fiction and as pointed out in **The Commissioner of Income-tax, Madras v. The Express Newspapers Ltd., Madras**[63], it is well settled that a

legal fiction is limited to the purpose for which it is created and should not be extended beyond its legitimate field. It is also made clear in **Apollo Tyres Ltd. vs. Commissioner of Income tax, Kochi**[64] that a deeming provision should be applied for the purpose for which the said deeming provision is specifically enacted.

As held in **Karnataka State Road Transport Corporation, Bangalore Vs. B.A. Jayaram and others**[65], when a statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to.

The provisions of the impugned Ordinance/Act and the Statement of objects and reasons for the impugned Bill examined in that light do not convey any express or implied continuance of the Societies only, but not the Managing Committees thereof. G.O.Ms.No.10, dated 4.2.2006 felt necessary to make interim arrangement to provide management to these Milk/Dairy Cooperative Societies to avoid vacuum on the premise that the Managing Committees ceased to exist and directed the Milk Commissioner and Registrar of Milk Co-operatives to take immediate action to appoint the District Collectors as Official Persons-in-charge for the eight district unions and the District Collectors to appoint Official Persons-in-charge for the primary societies under section 32 (7) of the 1964 Act.

That apart, Section 32(7) of 1964 Act becomes available only if there is no committee or in the opinion of the Government or the Registrar, it is not possible to call a general meeting for the purpose of conducting election of members of the committee.

Here, the committees are in existence and the impugned Ordinance/Act has no effect of making them cease to exist. Even G.O.Ms.No.10, dated 4.2.2006 does not refer to formation of any opinion that it is not possible to call a general meeting for the purpose of conducting election of the members of the committees. It only refers to the process of conducting elections taking sometime. The Government can direct appointment of a Persons-in-charge only in respect of such class of societies as may be prescribed and the word "prescribed" was defined by Section 2 (l) of 1964 Act as meaning prescribed by rules made under this Act. No such rules prescribing Dairy/Milk Cooperative Societies to be among such class of societies in respect of which the Government can take action under Section 32 (7) have been placed before the Court. If Dairy/Milk Cooperative Societies are not among a class of societies prescribed under Section 32 (7), the Government has no power of appointment of any person or persons to manage the affairs of such societies. If Section 32(7) is, thus, inapplicable to the situation, there is no other enabling provision relied on conferring any power on the Government to take recourse to the appointment of any persons-in-charge. The consequential proceedings of the Milk Commissioner and Registrar of Milk Cooperative Societies or the consequential proceedings of the District Collectors concerned appointing the concerned District Collectors as persons-in-charge for the district units and other officials as persons-in-charge for the primary cooperative societies are, hence, not legal and enforceable. The mutually aided cooperative societies are in fact managed by Boards of Directors under the 1995 Act and not Committees as under 1964 Act. But, the Government orders and the consequential proceedings referred to 'Managing Committees' of mutually aided Cooperative

Societies. In the light of the plain and unambiguous language of the impugned Ordinance/Act, it has to be concluded that the Boards of Directors of the Dairy/Milk Cooperative Societies do not cease to exist by virtue of the Ordinance/Act.

The Cessation of office of the Boards of Directors is claimed to be due to the incompatibility between 1964 Act and 1995 Act regarding the Managing Committees and the Boards of Directors. However, in spite of the distinction and difference between the societies registered under either Act regarding registration, membership, management and other aspects, a statutory fiction is created under the impugned Act/Ordinance deeming the societies under 1995 Act to be registered and continued under 1964 Act and there is no reason as to why such legal fiction cannot operate in respect of the continued management of the self-same societies by the existing Boards of Directors. If the society is deemed to be registered and continued under 1964 Act, such deeming shall be understood as covering and governing every aspect of the society unless any particular aspect is specifically or by necessary implication excluded from such deeming effect. Therefore, even if the Ordinance/Act is legally and constitutionally valid, it cannot be considered to have put an end to the existence of the Boards of Directors of the societies in question and the said Boards of Directors can be deemed to have been continued under the 1964 Act.

Of course, the Court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words in a particular section as held in **Commissioner of Sales Tax, Gujarat v. M/s. Union Medical Agency**[66]. But the Apex Court made clear therein itself

that the rule is never allowed to alter the meaning of what is of itself clear and explicit. If Sub-section (1A) of Section 4 of 1995 Act added by the impugned legislation is clear and explicit that the societies shall be deemed to have been continued under 1964 Act, there can be no occasion to read such deeming to be qualified by any undisclosed or unexpressed intent or effect.

In **Ali M.K. and others v. State of Kerala and others**[67], it was pointed out that after ascertaining the purpose, full effect must be given to the statutory fiction and it should be carried to its logical conclusion and to that end, it would be proper and even necessary to assume all those facts on which alone the fiction can operate. It was stated that when a thing is to be deemed something else, it is to be treated as that something else with the attendant consequences, but it is not that something else. Giving full effect to the statutory fiction carrying it to its logical conclusion makes the deeming provision open only to such construction and understanding to deem the Boards of Directors to be deemed to have been continued under the impugned Ordinance/Act.

Conclusions:

For the foregoing reasons, while the legislative competence of the State Legislature to enact the impugned Ordinance/Act positively exists and the legislation cannot fail on the premise of malice in law or mala fides, it is unsustainable as the classification of dairy/milk
co-operative societies as a separate class disentitled to the option of 1995 Act, is not founded on intelligible differentia which distinguishes them from other mutually aided co-operative societies or
co-operative societies under 1964 Act left out of their group and

further as any differentia or classification are not shown to have any rational relation to the object sought to be achieved by the statute in question. The absence of intelligible differentiation and reasonable nexus between the classification and the object of the statute make the legislation vitiated by violation of Article 14. The legislation also offends the fundamental right to form associations guaranteed by Article 19 (1) (c). The legislation also appears to be vitiated by impermissible retrospective effect and application of the principle of promissory estoppel. Even if the impugned Ordinance/Act were to be considered valid, still the Boards of Directors of the effected district unions and primary societies also should be deemed to be continuing along with the societies under 1964 Act and the writ petitions are to be ordered accordingly.

The adjudication of the questions in controversy herein is confined to examination of the constitutionality or otherwise of the impugned legislation incidentally touching upon the other matters in controversy between the State Government, the Federation and the District Unions including those which are the subject matter of pending judicial and other proceedings. Any reference in the discussion herein to these matters incidentally considered, has not to be taken as an expression of opinion on them and such disputes or controversies or judicial and other proceedings between the State Government, the Federation and the District Unions shall be determined in accordance with law uninfluenced by any observations in this judgment.

In the result,--

(a) The Andhra Pradesh Mutually Aided Co-operative Societies (Amendment) Act 2006,

Andhra Pradesh Act 20 of 2006, is struck down as unconstitutional;

(b) Even if the said Act is to be considred constitutional, the Boards of Directors of the Mutually Aided Co-operative Societies covered by the said Act shall be deemed to have been continued under the provisions of Andhra Pradesh Co-operative Societies Act, 1964;

(c) G.O. Ms. No.10 Animal Husbandry, Dairy Development & Fisheries (Dairy-II) Department, dated 04-02-2006 and the consequential proceedings of the Milk Commissioner and Registrar of Milk Co-operatives and the District Collectors concerned are quashed;

and

(d) The writ petitions are allowed accordingly. No costs.

G. BHAVANI PRASAD, J

Date: 01-05-2007

G.S. SINGHVI,

C.J.

Note:
L.R. copies to be marked
(Bo)
Svv

[1] 2004 (6) ALD 1 (LB)

[2] AIR 2002 SC 350

[3] (1996) 3 SCC 709

[4] (2002) 4 SCC 34

[5] AIR 1958 SC 731

[6] 1991 Supp (1) SCC 600

[7] AIR 1960 SC 554

[8] AIR 1978 KARNATAKA 148 (FB)

[9] AIR 1951 SC 318

[10] (2004) 1 SCC 712 = AIR 2004 SC 1295

[11] (1995) 5 SCC 730

[12] AIR 1955 SC 166

[13] (2001) 7 SCC 708

[14] (1993) 3 SCC 677

[15] (2001) 1 SCC 442

[16] (1981) 1 SCC 722

[17] (2003) 8 SCC 369

[18] (2004) 11 SCC 526

[19] AIR 1967 SC 1305

[20] (2000) 1 SCC 168

[21] (1996) 1 SCC 1

[22] (1974) 4 SCC 3

[23] (2003) 11 SCC 614

[24] (1983) 1 SCC 305

[25] 1992 Supp (1) SCC 594

[26] 1986 (Supp) SCC 254

[27] AIR 1961 SC 552

[28] AIR 1958 SC 578

[29] AIR 1958 SC 538

[30] AIR 1968 Supreme Court 1379

[31] AIR 1994 J & K 51

[32] 2005 (6) ALD 582 (LB)

[33] (2005) 6 SCC 537

[34] (2002) 8 SCC 481

[35] AIR 1951 SC 118

[36] AIR 1954 SC 224

[37] AIR 1963 SC 812

[38] AIR 1958 A.P. 78

[39] 1971 (1) SCC 678

[40] AIR 1978 AP 121

[41] AIR 1988 SC 1136

[42] AIR 1965 SC 40

[43] 1969 (1) SCC 853

[44] AIR 1962 SC 171

[45] AIR 1962 SC 458

[46] AIR 1967 SC 829

[47] (2004) 12 SCC 588

[48] (1997) 8 SCC 522

[49] (1997) 6 SCC 623

[50] (1994) 5 SCC 450

[51] (1983) 2 SCC 33

[52] 1986 (Supp) SCC 584

[53] 2006 (1) Decisions Today (SC) 352

[54] (1997) 1 SCC 326

[55] (1996) 7 SCC 637

[56] (2003) 4 SCC 399

[57] 1993 Supp (1) SCC 96 (II)

[58] (1995) 6 SCC 16

[59] AIR 1959 SC 308

[60] (2001) 4 SCC 534

[61] (2003) 4 SCC 739

[62] (1987) 1 SCC 378

[63] AIR 1965 Supreme Court 33

[64] (2002) 9 Supreme Court Cases 1

[65] 1984 (supp) SCC 244

[66] AIR 1981 SC 1

[67] (2003) 11 SCC 632